



Appeal Decision

Hearing Held on 19 October 2021

Site visit made on 19 October 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2022

Appeal Ref: APP/D1265/X/21/3272690

Rogarnet, Horton Road, Three Legged Cross BH21 6SD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Time GB(R) Ltd against the decision of Dorset Council.
 - The application Ref 3/20/0915/CLP, dated 9 June 2021, was refused by notice dated 21 January 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 described as "as a caravan site for seven static caravans for occupation for holiday accommodation".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing, I raised concerns regarding the lack of notification letters of the appeal and the hearing on my file. The Council confirmed that there had been no public notification of the hearing because there were no interested parties following the notification of the submission of the appeal which had been carried out on 11 June 2021. There had been 1 external interested party at the application stage 'Cadent Gas Ltd' who are responsible for amongst other things for electricity transmission lines and above ground electricity instillation near to the site. It was agreed that this response did not raise material factors relating to the lawfulness of the site but was informative to the landowner before undertaking any proposals. A consultee within the Council the 'Natural Environment Team' had also made comments at the application stage but those comments are taken account of within the Council case for refusing the application. Overall, I have no reason to believe that the interests of any party have been prejudiced by the lack of notification.
3. The description of the proposed development above, is taken from the section of the application form which relates to why the applicant considers the LDC should be issued. This was agreed as being correct, at the hearing.

Main Issue

4. The main issue is whether the Council's decision to refuse the LDC was well founded, with particular reference to whether the proposed use would involve

the making of a material change in the use of the land.

Reasons

Background

5. I raised the matter of what the relevant planning unit is for the consideration of whether the proposal would involve a material change in the use of the land. It was explained that the application site boundary outlined in red on the location plan was the same as the area that the Council had previously issued a LDC for the existing use of the land for the stationing of no more than 5 touring caravans for holiday and recreational human habitation purposes (Council ref 3/19/17/12/CLE – the '2019 LDC'). When the application for the 2019 LDC had been submitted, it had also covered a wider area, including the land now outlined in blue on the current proposal plan. However, it was explained that the Council had only been satisfied, based on the evidence submitted at that time, that the LDC should be issued for the smaller area that is also the subject of this proposal. The adjoining land in the same ownership had been in use as a certified temporary caravan site under the provisions of Schedule 2, Part 5, Class A of the GPDO¹. I have no evidence and the parties at the hearing could not elaborate upon the way in which the 2 sites have operated.
6. In the present case, I don't have that historic evidence that contributed to the issuing of the 2019 LDC and those present at the hearing had not been directly involved. For the purposes of this appeal, it was agreed that I should consider the proposal within the application site rather than broaden it out to any wider area. I am also starting with the conclusive presumption of the lawfulness of the use certified in the 2019 LDC, as required by s191(6) of the Act and that this is the benchmark by which I need to consider this proposal.
7. The application site includes 2 fields. The first has a pond with mature trees around it close to the centre as well as land on which a large pylon is positioned. Otherwise, apart from a modest timber shed, the field has a rough grassed surface as does the smaller field within the site that I am considering. There are caravan electric hook-ups on timber poles within the fields but other than that and the informal track into the site, I could not see any other physical manifestation of the use of the site for caravans. The Council refers to 5 hard pitches being in existence and a more defined track as well as different surfacing around caravan pitches which are evident in the aerial photograph from 2010 but which had become less distinct in the image from 2014. These fields are surrounded by vegetation including large trees around the boundaries.
8. The proposal would involve the use of the land for 7 static caravans rather than the 5 touring caravans but used for the same purpose. There is no planning permission of relevance in this case, with the use being defined by the 2019 LDC. As such there are no planning conditions to consider.

Change of use or change in manner of the same use?

9. The stationing of caravans on land is not in itself development within the meaning of s55 of the Act and it is the purpose of the caravans which relates to what use the land is being put to. "Caravan" within the definition of the 1960

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

Act² 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. The 1968 Act³ provides further definition of the maximum size for twin-units which gives the only size limitation for caravans.

10. The appellant's statement sets out some additional conventional ways to consider the types of caravans and these are not disputed by the Council. Touring caravans can be basically defined as those which are moved by being towed behind a vehicle on an integral chassis. Static caravans are typically towed behind a heavy goods vehicle on-top of a trailer.
11. The appellant refers to the Breckland⁴ judgement in stating that the existing use and the proposed use are the same, that being a caravan site. Therefore, in their view, no material change of use would occur. Breckland in my view does not support that position. In that case, the LDC issued by the relevant planning authority had the description "use of land as a caravan and camping site including associated amenity area". The judgement refers, at paragraph 41, to the term caravan not being qualified in any way. It goes on to say that the claimant (the planning authority) could have limited the LDC to touring caravans but did not do so. That was a very broad definition of the lawful use.
12. The circumstances in this case are different from Breckland. The Council has very carefully qualified what has been certified as lawful by referring to the type of caravans and what they, and therefore the land on which they are sited, are used for.
13. A further judgement, Childs⁵ is also relevant to consider. A site for 4 residential caravans had been subject of a LDC specifying that number of caravans. In Childs, the Planning Authority had refused a proposed LDC under s192 of the Act for a number of alternative options for additional caravans (8, 15, 30 and 50). It was held that the LDC reference to a specified number of caravans and an increase in number is capable of amounting to a change of use which may be material. Counsel for the Claimant in Childs had proffered a similar argument as the appellant in the present case, that if the decision-maker is not able to formulate a different use before and after the intensification, no change in the character of the use can be held to have occurred. Within the discussion in that case the Judge says "I do not consider that it can be said that a change in the number, however great, is incapable of amounting to a material change of use". I cannot agree with the appellant that the Childs authority is an outlier although it is older than some of the other cases that I have been referred to.
14. In addition, at the hearing, brief details were discussed of a nearby site where an Inspector's decision to dismiss a s195 appeal⁶ for a LDC that concerned static caravans, had been subject to a High Court Hearing and the judgement had been due imminently. The decision was then handed-down (the St Anne's Court authority)⁷ before I had reached a decision in this case and so I gave the parties an opportunity to comment upon any significance that it may have.

² s29 Caravan Sites and Control of Development Act 1960

³ S13 Caravan Sites Act 1968

⁴ Breckland District Council v SOS & Plum Tree Country Park Limited High Court of Justice Queen's Bench Division Administrative Court [2020] EWHC 292 (Admin), 2020 WL 0764507

⁵ R (oao Childs) v FSS & Test Valley BC [2005] EWHC 2368 (Admin)

⁶ APP/D1265/X/20/3256918 – St Annes Cottage, Horton Road, Three Legged Cross BH21 6SD "the use of land for the stationing of static caravans for the purposes of human habitation".

⁷ St Anne's Court Dorset Ltd v SSHCLG & Dorset Council [2021] EWHC 2954 (QB)

15. The St Anne's Court authority rehearses many of the relevant other cases. It was held that, where a planning permission had been issued for a use of a site for touring caravans, the question of whether use of the site for the stationing of caravans for the purposes of human habitation would constitute a material change of use from the permitted use of the site for touring caravans, was a matter of fact and degree. The judge clearly states that "touring caravans" is a functional limitation, as much of a functional limitation as was referred to in other authorities such as Winchester⁸ (aka 'Wall v Winchester'). In Winchester, the use of land as a 'travelling showpeople's site' was considered a limited grant of planning permission for that use that could not be interpreted as a planning permission for a residential caravan site even though there were no planning conditions restricting it only to travelling showpeople. In my view it is wholly reasonable in the present case to consider that the 2019 LDC, describing the use of the land for "the stationing of no more than 5 touring caravans for holiday and recreational human habitation purposes" is a functional limitation that constrains the development certified in the same way it would if used as a description of what was permitted by a planning permission. It is therefore appropriate to consider the appeal consistently with these relevant cases.
16. Clearly from the foregoing that the term "touring" must relate to more than just a caravan's physical construction. The way in which touring caravans generally function on site is different from static units. In my experience, the activity around touring caravans is likely to be ephemeral with awnings and other paraphernalia temporarily used when people are occupying them whilst on holiday. Static units can lead to more domestic settings. This can include steps and the demarcation of plots. Significantly however touring units are generally towed away when the holiday makers go home. Static units and any peripheral impacts are more permanent.
17. The size and appearance of the basic types of caravans are still also relevant to consider. There is a variety to the size of touring caravans and they come in variety of specifications enabling comfortable living conditions including potentially use outside of the traditional holiday seasons. However, generally speaking, as well as being transitory, they tend to be smaller than static units reflecting the need to tow them. Static units need to be brought onto site by large vehicles and their lack of mobility and semi-permanent connection to services means that they are simply less easy to move around. Static caravans generally remain on site and therefore have more permanence.
18. The positioning of 7 static caravans on site rather than the 5 touring caravans in my view is a change in the way that the site would function and how it would appear. I therefore consider that the proposal for 7 static units would be a change in the use of the site even if occupied on the same holiday basis.

A material change in the use?

19. It is necessary to consider the proposal for 7 static units against the starting point of there being a lawful use for 5 touring units. The appellant has also made the point that in practice caravan sites generally may not have only one type of caravan with a mixture being possible. However, in this case, the proposal has been made with no definition of any specific reference to how the site will be managed and very limited evidence about what the actual activities

⁸ Winchester CC v SSCLG [2013] EWHC 101 (Admin)

- had been previously. The only definitive point of reference is the LDC and the proposal specified for 7 static caravans. A generalised question is being put and it is inevitable that the reasoning in this decision will also be generalised.
20. An increase in number of caravans, is capable of potentially intensifying the use of the site. From the Hertfordshire⁹ judgement, it is clear that what must be determined is whether the increase in the scale of use has reached a point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use.
21. Much of what was discussed at the hearing were views and opinions of the individuals in attendance reached through their respective experience. Like them, I can also reach some conclusions based upon my experience taking account of the relevant authorities. In the JBS Park Homes case¹⁰ the judge expressed the view that static caravans are larger than touring caravans and are more attractive for long term residential use. The judge in the recent St Anne's Court case made reference to that and to similar logic, using "self-evidence from the words used".
22. Looking first at the visual sensitivities, the Council is concerned that the proposal will affect the character and appearance of the site and that this would involve a definable change. The site is large and level both inside and relative to the adjoining land. The boundaries are well defined by substantial vegetation including large trees although I could see through this boundary landscaping into the adjoining land outside of the appellant's ownership. The site is also set back from the road behind the temporary caravan site and a bungalow. It is fair to say that whilst the site is and the proposal would be noticeable from some adjoining land and that bungalow which is in the same ownership, it is not a particularly visually sensitive or prominent position. Nonetheless, the key question is whether there would be definable impacts in planning terms.
23. The site is can accommodate 5 touring caravans as shown on aerial images whilst leaving space around each unit and a lot of space elsewhere within the site. The electric hook-ups on site allow for a spacious layout and in my view that would allow for statics to be positioned adjacent to those whilst retaining the overall degree of space. Even if an additional 2 touring or static units were sited there, this could be achieved with a similar degree of space between each caravan. However, the greater take up of land that would be caused with static units would be noticeable from outside of the site.
24. No operational development is proposed as a consequence of the change in type or number of caravans. Whilst no caravan site licence currently exists, there is no dispute that one would be required when operated as a caravan site under the terms of the present LDC or as proposed. For the appellant Mr Eiser questioned whether there would be any change on the ground due to any conditions on a site licence. The Council suggest that static caravan sites would require access roads and ground works for bases although at the hearing I asked about this and no evidence could be produced to confirm it. In relation to these matters, the lack of specification about how the proposal would be

⁹ Hertfordshire County Council v SOS and Metal and Waste Recycling Ltd [2012] EWHC 277 (Admin)

¹⁰ JBS Park Homes (A firm) v Secretary of State for Communities and Local Government, Mendip District Council [2018]

managed makes it difficult to know with any precision what impacts there would be. I need to come to some common-sense views. It seems likely that the additional static units would require additional stable bases which again would add to the noticeability of the development. There may be a need to improve and extend the existing bases that have become over-grown to accommodate the different units. Internal roads seem to me to be a neutral factor given that touring caravans usually require towing in and out behind a vehicle whereas with static units, occupants would generally arrive just in their private vehicles without having to tow anything.

25. Development required by a site licence can constitute permitted development under the terms of Schedule 2, Part 5 of the GPDO¹¹. Other discretionary operational developments are likely to require planning permission and would therefore be within the control of the Council as the Local Planning Authority. However, I consider that regardless of whether any physical changes would be required by the licensing authority, there would be some visual changes. These could result just from the change in type of caravan as they will be generally bigger and there would be more of them. They would take up more space. The demarcation of plots may result as well, instead of the relative informality of touring plots.
26. Static units would also be more likely to be in situ all year around including when surrounding trees provide less foliage to screen their impacts during the winter months when touring caravans are less likely to be present. In my view, the change in nature of the units and their increased permanence would be noticeable. Additional usage through a longer season may also be possible in more comfortable static units which would also therefore have a degree of additional, more permanent recreational and residential paraphernalia on site.
27. The issue of any traffic sensitivities was difficult to pin down at the hearing. I heard various scenarios put to me. Static caravans are more noticeable when brought onto site usually on the back of lorries. However it was accepted by the Council that the highway conditions are not problematic or particularly sensitive. Once in position however it seems to me that static units would be less likely than touring caravans to cause sensitivities to highway conditions whether that revolves around safety, traffic flows or how visually or even aurally noticeable the vehicles are.
28. This does however depend on the specifics of how such a use is operated and we do not know about that because the application was made in rather speculative terms. There was no clear picture from the appellant about whether it was likely that cleaning of static caravans would be undertaken by a manager on site, whether it would be cleaners arriving periodically between occupancies or whether the site would be used by the owners or lessees of each pitch as their own holiday accommodation. It seems to me that the existing use as certified by the LDC could be used in a variety of ways as well but generally is it most likely to be holiday makers bringing their own vehicles onto site and towing their own caravans. Apart from cleaning of provided facilities, there would be no necessity for the site owner to clean individual touring units whereas they would need staff to clean statics. There may be some difference to traffic movements in and out due to these factors but it is not possible to know with any reliability given the lack of details provided.

¹¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Furthermore, even if traffic conditions were improved as a result of the proposal, that could still affect whether a material change would occur.

29. Lastly, the Council considers that the off-site ecological effects of the proposal is also a definable characteristic that will be affected by the proposal. In that respect the site lies within 100m of the Holt and West Moors Heaths Site of Special Scientific Interest (SSSI) which is part of the Dorset Heaths Special Area of Conservation and Dorset Heathlands Special Protection Area. These off-site important habitats are highly sensitive and the Council refers to the policy requirements within the Dorset Heathlands Planning Framework, 2020-2025 Supplementary Planning Document, of April 2020 (SPD).
30. The extent to which the proposal could have planning consequences is clearly material to my consideration here. The planning consequences are addressed within the SPD which is a material consideration that would need to be taken into account when considering the planning merits of a proposal. It is not part of the adopted development plan for the Council's area but the Council says that it is given great weight by them when making planning decisions. I agree that it is a material consideration which would need to be weighed in the balance when considering merits of any planning proposal.
31. The use of the site for 7 static units rather than 5 touring units could potentially accommodate a significant number of additional people for a longer period of the year. Although I recognise touring caravans can be large and may be well appointed, they are generally smaller with more rudimentary facilities than static caravans. Having an increased number of people for more of the year due to the siting of 7 static caravans would in my view lead to more people using the sensitive surrounding area. The sensitive qualities of the surrounding area are part of what makes this an attractive place to come and stay. Figure 1 in the SPD refers to the consequences that can occur due to what it terms "urban effects". Of particular relevance to the increased number of people that would be using the site due to the proposal is "trampling" causing changes to vegetation, soil erosion amongst other impacts. Appendix B to the SPD sets out advice for various uses. This states that self-catering, caravan, chalet and touring holiday accommodation will generally not be allowed within 400m of the Dorset Heathlands. This demonstrates the fine sensitivity of this matter and in my view therefore contributes to the materiality of the proposed change of use. Whether the degree of any potential harm outweighs other planning considerations or whether they can be mitigated for, are matters to consider through a planning application.

Conclusion

32. The proposal would therefore result in definable changes to the site. From the information available given the general terms in which the application was made, those would most clearly relate to the additional visual effects and also the potential impacts upon sensitive ecological environments which the Council's SPD relates to. Other impacts could result but the lack of detail provided means that no firm conclusions can be reached about them. As a matter of fact and degree, I consider that the proposal would however result in changes in the definable character of the use and would involve a material change of use of the land.
33. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land "as a

caravan site for seven static caravans for occupation for holiday accommodation", 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.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ben Eiser	Planning & Development Consultant
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Crowther	Council Solicitor
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Mr Ian Cousins	Council Planning Officer
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DOCUMENTS

- 1 Cadent letter 11 November 2020
- 2 Internal Council emails from Natural Environment team