



Appeal Decision

Hearing held on 12 July 2022

Site visit made on 12 July 2022

by Diane Lewis BA(Hons) MCD MA LL.M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Appeal Ref: APP/C1760/C/20/3265518

Land at Valley Field Park, London Road, Leckford, Hampshire SO20 6DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Christine Reed against an enforcement notice issued by Test Valley Borough Council.
 - The notice was issued on 19 November 2020.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change in use of the land from use as a residential caravan site for 5 caravans to use as a residential caravan site for 7 caravans.
 - The requirements of the notice are to:
 1. Permanently cease the use of the land as a residential caravan site for 7 caravans.
 2. Permanently reduce the number of caravans stationed on the land from 7 to 5.
 3. Permanently remove from the land all ancillary and incidental development/items associated with the two caravans to be removed as part of requirement 5.2 above. This will include any buildings (garages), hard standings (including the concrete bases and any sub-bases that the caravans sit on), fencing, gas/water tanks, any utility connections and all residential paraphernalia.
 4. The areas of land (underneath and immediately surrounding the two caravans and any development/items removed as part of requirements 5.2 and 5.3 above) must be returned to grass.
 - The period for compliance with the requirements is: One (1) year from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - The application for costs made by the appellant against the Council is the subject of a separate Decision.
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DECISION

1. The appeal is allowed and the enforcement notice is quashed.

REASONS

The Land

2. The Land identified on the plan attached to the enforcement notice covers an area of some 2.1 hectares, located near the junction of the A30 London Road and the minor road Winchester Street. The caravans are on the northern part of the Land and the southern part is grassland. The site is served by an access off Winchester Street. The adjacent land at the junction is developed with a public house. The Land was acquired by the appellant in late 2007.

3. There is an extensive planning history, dating from around 2001. A lawful development certificate (LDC) was issued certifying that on 10 May 2001 the use of the land as a residential caravan site for four caravans, as defined by s29(1) of the Caravan Sites and Control of Development Act 1960, was lawful¹. The land referred to in the LDC was shown on plan as being slightly larger than the appeal site due to a difference in the position of the boundary around the public house. The Inspector concluded that the use, as described, had continued for a period of at least ten years before the date of the application. At the time of the site inspection in April 2003 there was one touring type caravan in the field near the northern boundary of the public house (then in use as a restaurant). Throughout the reasoning the Inspector refers to the Land as 'the field' indicating that there was little by way of site infrastructure.
4. The Council then issued a LDC under s192 relating to the same area of land, which certified that on 8 September 2003² the proposed use of land as a residential caravan site for five caravans would be lawful³. The reason stated the proposed use would not constitute a materially different use to the use described as lawful in the LDC on 10 May 2001. Based on this LDC a site licence was granted on 30 August 2005 for use of the land as a caravan site for 5 caravans. The site layout on the licence plan had the access in the south west corner and the 5 plots along the northern edge of the site⁴.
5. Subsequently through to 2015 there was a series of LDC applications under s192 for proposals for varying numbers of caravans. No certificate was issued. The appeal decision regarding a LDC application for 6 caravans⁵ is particularly referred to by the Council because of the similarity in the number of caravans under consideration. The Inspector also commented on the actual and lawful uses of the site and the relevance then of the previously issued LDCs. In February 2007 the site consisted mainly of an undeveloped grassed field set in open countryside, with signs that it had been used for small scale storage⁶. The Inspector cast doubt that on the date of the LDC application (17 November 2005) the site could have lawfully been used for siting four (or five) residential caravans⁷.
6. The only planning permission granted was on appeal in January 2006 for the construction of a new vehicular access from Winchester Street to serve the residential caravan site. After the land passed into the ownership of the appellant the access was constructed together with an internal road and site infrastructure. Works were completed by about May/June 2008⁸. The Council's records and statements from site residents indicate that the number of mobile homes on site increased from 3 in July 2008 to 4 in October 2009 and 5 in October 2010⁹. The change in the character and appearance of the northern part of the site that occurred after 2007 was described in some detail in an appeal decision issued on 17 January 2011¹⁰.

¹ Appeal decision reference APP/C1760/X/01/1071758 dated 24 April 2003

² The certificate should state the date of the application, not the date of the decision

³ Ref TVN.CLP.00006

⁴ A revised caravan site licence was granted on 23 March 2018. A condition of the licence restricted the number of caravans to a maximum of five except where increased by a relevant planning permission.

⁵ Appeal reference APP/C1760/X/06/2013089 dated 1 March 2007

⁶ Op cit paragraphs 8, 14, 15

⁷ Op cit paragraph 14

⁸ Appendix B to the Council's Final Comments

⁹ Appellant's statement of case Appendices A4 and A11

¹⁰ Appendix L to the Council's statement of case. Appeal decision ref APP/C1760/X/10/2125334 paragraphs 23 to 28. The appeal site visit was made on 30 November 2010.

7. The Council dated the installation of the sixth mobile home to between November 2010 and September/ October 2011, and probably towards the end of this time period¹¹. Mobile home number 7 was put in place between 30 October 2014 and 29 January 2015. The appellant did not dispute the timeline and no claim was pursued that a caravan site with 6 caravans, or mobile home number 6, was lawful. The current occupiers of plot 6 have been in residence since 2018 and plot 7 from 2015¹².
8. To summarise, the land was a largely undeveloped grassed open field with a very low level of use prior to 2006. By mid 2008 the basic physical form of the caravan site was established in terms of access, circulation and amenity space. The installation of a new access, site infrastructure and services, followed by the laying out of residential plots and the introduction of larger static mobile homes fundamentally changed the character of the site to a more formal mobile home park, albeit with a spacious layout and generous amounts of amenity space. The five plots on which five mobile homes were installed and occupied had occurred by around October 2010. The introduction of plot 6 probably around 2011 and plot 7 around the end of 2014 intensified the use.
9. The five caravans were stationed consistently on the northern part of the site since October 2010. The use of the southern part of the land was addressed in the 2011 appeal decision¹³. The area was laid to grass, had no buildings or caravan on it and was described as the paddock. The Inspector concluded that the paddock was in the same planning unit as the northern area, there being a single main purpose of the use of the whole of the land (use as a caravan site) to which any secondary activities were ancillary or incidental.
10. At the hearing the Council confirmed that the red line of the Land was consistent with the area of ownership. Through discussion, the keeping of horses on the paddock was described as occasional. Residents use the paddock as an amenity area for dog walking and such like. On the site visit I noted the areas are separated by a post and rail fence and hedge planting and that a stile provides access into the paddock. The position appears not to have changed significantly since 2011.
11. All matters considered I conclude that the Land is a single planning unit with a single primary use as a caravan site. Consequently, in this respect no corrections are required to the description of the alleged breach of planning control or to the notice plan.

Appeal on ground (b)

12. The issue is whether or not the matters stated in the notice as constituting the breach of planning control have occurred as a matter of fact.
13. The Land was in use as a residential caravan site for seven caravans at the time when the notice was issued in November 2020. This fact is supported by evidence from the appellant, including statements from the site residents and evidence from the Council, including photographs and records of site visits. To this extent the appeal on ground (b) fails.

¹¹ Appellant's statement of case Appendix 4 paragraphs 5.45, 5.46, 5.57 and 8.26

¹² Appellant's supplementary statement May 2022 paragraph 8, statement of case paragraphs 151 and 152.

¹³ Appeal decision ref APP/C1760/X/10/2125334 paragraphs 5, 14 to 18.

14. As to whether a material change of use occurred is addressed under the appeal on ground (c).

Appeal on ground (c)

15. In order to succeed on this ground of appeal the appellant has to show that the use of the Land as a residential caravan site for seven caravans does not constitute a breach of planning control.
16. The alleged breach of planning control is clear that a material change of use has occurred as a result of an increase in the number of caravans on the land from 5 to 7. This is also reflected in the requirements to remedy the alleged breach – to cease the use of the land as a residential caravan site for 7 caravans and to reduce the number of caravans on the land to 5, to remove all incidental development associated with the two caravans and by restoring the two plots to grass.
17. Therefore the key on-site change identified by the notice is the increase in the number of plots with a caravan from 5 to 7. The land is used for the same purpose, as a caravan site. The alleged material change of use is due to an intensification in the use of the land as a caravan site, even though intensification is not a word used in the notice. The appellant understood this to be the case, as clearly seen in the case presented.
18. Certain principles to assess whether a material change of use by intensification has occurred have emerged through case law, including the *Hertfordshire County Council, Reed and Barton Park* judgements¹⁴. Intensification of a use is capable of constituting a material change of use. For it to do so the intensification must have resulted in a material change in the definable character of the use of the land. When assessing whether a material change of use has occurred it is permissible to consider off-site effects related to the identified change in scale, in addition to the effects on-site. Whether a material change in the character of the use of the land has taken place is a matter of fact and degree for the decision maker.

Main issue

19. The main issue is whether the planning consequences resulting from the increase from 5 to 7 caravans have brought about a definable change in the character of the use of the land such that as a matter of fact and degree it amounts to a material change of use.

Base position

20. The base position against which to compare effects and change is the caravan site with five caravans, as set out in the notice. The review of the site history has confirmed that there are no restrictions on the caravan site (such as number of caravans, seasonality of use, siting) by way of a planning condition attached to a planning permission. The description of development in the LDCs qualified the number of caravans but the more relevant comparator is the character of the site in 2010.

¹⁴ *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd* [2012] EWHC 277 Admin and [2012] EWCA Civ 1473; *Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council* [2014] EWCA Civ 241; *Barton Park Estates v The Secretary of State for Housing Communities and Local Government and Dartmoor National Park Authority* [2022] EWCA Civ 833

21. The five plot caravan site was characterised by a spacious layout in residential use. Associated activity probably was of a low level and of a domestic nature, so the site retained a quiet living environment. Residential occupation was all year round, as opposed to being restricted to a seasonal pattern. The mobile homes provided permanent living accommodation and the principal home of the occupants. The internal access road looped round the northern part of the land, with a short spur to the access on Winchester Street and another short spur towards the paddock. Two small areas of parking bays and lighting columns were present. Three plots were sited to the south of the road, backing onto the paddock, a fourth plot was in the north east corner and the fifth plot was somewhat separate, towards the western boundary. The caravans were twin unit mobile homes and the plots were laid out with driveways, garages and gardens. A few small structures were sited near the site entrance and other residential features were apparent such as notice boards and a post box. A package treatment plant was installed by the entrance to the paddock. This open area of grassland emphasised the rural setting of the site.
22. The Inspector in the 2011 decision described the site as having a predominantly open character when seen as a whole from inside its boundaries. When viewed from Winchester Street at the site entrance the impression gained was of a series of quite closely spaced mobile homes which dominated the view from that point. From more distant viewpoints the overall impression was of a small number of mobile homes set at intervals within the predominantly open area of the land¹⁵.

Existing character

23. The creation of two new plots on the north eastern part of the site enabled the siting and occupancy of two additional caravans. The plots are similar in size and appearance to the earlier plots, with twin unit mobile homes, driveways, garages and garden planting. The land continues in all year round residential use providing permanent (not holiday) residential accommodation. The level of activity would have increased in and around the homes and through additional comings and goings to and from the site. Any such increase would be modest and be of a similar nature and have a similar pattern to the neighbouring established plots. The quiet residential environment is unlikely to have been affected to any material degree. All other principal features of the site have remained unchanged, including the site infrastructure, the central amenity space and the paddock to the south. The caravan site has not reached a threshold where I would liken it to a small housing estate in the countryside¹⁶.
24. The appearance of the site in local views and water quality are potential off-site effects related to scale.

Local views

25. The landscape character assessment¹⁷ describes the Leckford and Chilbolton Downs area as an elevated gently undulating area of open chalk downland dominated by arable farming. There are long views to ridges and skylines and the lack of development creates an impression of remoteness. More particularly, I found that the site is located close to the A30, a principal traffic

¹⁵ Appeal decision ref APP/C1760/X/10/2125334 paragraphs 23 to 28

¹⁶ Appeal reference APP/C1760/X/06/2013089 dated 1 March 2007 paragraph 12

¹⁷ Test Valley Borough Landscape Character Assessment 2004 (updated 2018)

route that reduces the sense of isolation. Blocks of woodland and mature hedgerows provide enclosure and in places contain local views. The mature vegetation to the boundaries of the appeal site also gives good enclosure.

26. The Council identified a number of relevant viewpoints, from along the A30 (east and west), Winchester Street to the north and a public footpath to the south. The caravans in the north east corner of the site are the most visible because of their more elevated position. However, views are mainly glimpsed and fleeting views, whether because of the changes in boundary vegetation, the variation in topography over short distances or because they would be from a moving vehicle. From the public footpath, the more sensitive location, visual impact is limited, which the Council acknowledged. My conclusion is that the additional two caravans have a very limited effect on the appearance of the site in local views or on landscape character.
27. In previous appeal decisions, how the site would relate to its context and be seen in its countryside surroundings weighed in favour of a proposed increase in the number of caravans amounting to a material change of use. However, the 2005 and 2007 decisions predated the installation of infrastructure and introduction of mobile homes that took place in 2007/2008. In other words the base comparator position was very different. The 2011 decision considered a proposed increase from five to fifteen mobile homes, which the Inspector concluded would create a much denser mass of man made objects, in contrast to the undeveloped surrounding landscape. Boundary trees and hedgerows would become harder to see reinforcing the effect, especially from the south west. Whilst the base position was similar, a greater number of mobile homes was under consideration. With seven caravans there is not the same dense mass of structures and the boundary hedges and trees remain dominant landscape features.
28. Therefore the circumstances in the current appeal may be distinguished from those prevailing when previous decisions were made. Visual impact does not support a conclusion that a material change in the character of the land use has occurred.

Water quality

29. By way of background, the marine and estuarine habitats of the Solent Marine European Sites support nationally and internationally important numbers of bird populations. Evidence has shown that high levels of nitrogen and phosphorus input to the protected water environment is causing eutrophication at these designated sites. Currently these nutrient inputs mostly come either from agricultural sources or from wastewater from existing housing and other development. The resulting effects on ecology from an excessive presence of nutrients are impacting on protected habitats and species, resulting in a loss of biodiversity and causing the protected areas to be in an unfavourable condition.
30. Following on from Integrated Water Management Studies dating back to 2008 Natural England advised in 2018 that larger development should calculate a nutrient budget and achieve nutrient neutrality. Since then Natural England's Guidance has been developed and updated in light of further condition assessments. As from June 2019 Natural England advocated a nutrient neutrality approach for all types of development that would result in a net increase in population served by a wastewater system.

31. The appeal site is within the fluvial catchment where the nutrient neutrality approach applies. Therefore the additional two caravans may have consequences for water quality unless the effect of the increase in homes is able to be screened out from giving rise to a likely effect, either individually or cumulatively.
32. Having considered the advice from Natural England for the Test Valley area and adopting the precautionary principle the two extra caravans would not be able to be screened out at stage 1 in the Habitats Regulations Assessment process. The evidence from the appellant's consultants, including that on the source-pathway-receptor model, would be more properly considered as part of an appropriate assessment. I also do not consider the approach of the Inspector in the Barney decision issued in February 2011¹⁸ is one I should follow, bearing in mind in that case the European site was a very different habitat, facing different types of pressures that required different approaches to mitigation. The decision was in 2011, predating the 2017 Habitats Regulations and important developments in case law that have provided greater clarity on the assessment process. More specifically I must take into account the current Natural England advice for development proposals with potential to affect water quality resulting in adverse nutrient impacts on habitats sites and Government advice on the issue including the Written Ministerial Statement July 2022.
33. Against this background it is also very relevant that even if an appropriate assessment found the no adverse effect on site integrity test could not be met, mitigation through nutrient neutrality offers a solution. In this instance a potential effect on water quality has a limited role in defining the character of the use of the land.

Conclusions

34. The *Reed* judgement referred to the underlying principle which emerged from the case of *Hertfordshire* namely that mere intensification is not sufficient to amount to a material change of use if it falls short of materially changing the definable character of the use of the land.
35. By 2010 Valley Field Park had developed into a small park home site characterised by a spacious layout and a generous amount of amenity space. As a matter of fact and degree the subsequent increase from 5 to 7 caravans has not materially changed the definable character of the use of the land even allowing for potential off-site effects related to scale.
36. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
37. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Diane Lewis

INSPECTOR

¹⁸ Appellant's Appendix B15

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Director, Green Planning Studio Limited
Emily Temple	Director, ET Planning Limited
Michael Rudd	Barrister
Residents of the appeal site	

FOR THE LOCAL PLANNING AUTHORITY:

Fay Eames	Principal Planning Officer
Michael Lowe	Development Manager
Tim Parker	Enforcement Officer

INTERESTED PARTIES:

Tony Ewer	Chair, Chilbolton Parish Council
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DOCUMENTS submitted at the hearing

Natural England Advice 16 March 2022
Unilateral Undertaking with tracked changes
Personal statements x 6 signed and dated 12.07.2022