



Appeal Decision

Site visit made on 3 October 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/V1260/X/21/3289719

Meadowbank Holidays, Stour Way, Christchurch BH23 2PQ

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ashley Taylor of Meadowbank Holidays Ltd against Bournemouth, Christchurch and Poole Council.
 - The application Ref. 8/21/0140/CLP is dated 16 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 described as: Siting of 16 holiday caravans without compliance with Condition 2 of Permission 8/76/5122.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proceeds on the basis of non-determination and whilst there is no formal decision before me, the Council has been provided with an opportunity to provide a written statement.
3. The appeal application seeks certification that non-compliance with condition 2 of planning permission ref 8/76/5122 (the permission) can result in the lawful stationing of 16 static holiday caravans at the appeal site. The appellant then refers to other planning permissions for the site, however this goes beyond the scope of the appeal application and there is considerable doubt in my mind as to whether I have all the necessary documents and plans relating to these permissions before me. I also have no equivalent powers to that set out under s191(4) of the Act to modify the terms of the LDC application. It is therefore for the appellant to propose the use or operation that they wish to ascertain the lawfulness of. Going beyond the scope of the LDC application would therefore lead to injustice and so my assessment will be restricted to the proposal described on the appellant's application and appeal forms.

Main Issue

4. The main issue is whether the appellant has demonstrated on the balance of probabilities that non-compliance with condition 2 of the permission can result in the lawful stationing of 16 static holiday caravans at the appeal site.

Reasons

5. The appeal site is used for touring caravans. It is part of a wider site used as a holiday park with the stationing of static holiday caravans and the provision of supporting facilities.
6. The appeal application seeks certification for the use of the appeal site for the siting of 16 holiday caravans, being static caravans. To demonstrate lawfulness, it is contended there has not been compliance with condition 2 of the permission. In matters such as this, the onus is on the appellant to demonstrate the case on the balance of probabilities.
7. The permission sought relief from condition 2 of an earlier planning permission to permit the stationing of caravans and other erections within 100 feet from the river bank.
8. Condition 2 of the permission then relates to an approved layout plan. It is however plainly only concerned with the part of the site closest to the River Stour. This is consistent with the scope of the permission sought. It then shows no static caravans in the area of the appeal site and indeed annotates that it is no touring caravans that are to be sited closer than 75 feet from the river.
9. The appellant then provides evidence in the form of a Statutory Declaration that condition 2 of the permission has been breached as caravans have been stationed closer than 75 feet to the River Stour. Whilst such matters should be determined pursuant to an application made under s191 of the Act, for a failure to comply, the Council advises that it does not have evidence to dispute this.
10. Notwithstanding, the purported breach of condition 2 of the permission does not demonstrate on the balance of probabilities that the appeal site can then be lawfully used for the stationing of 16 static caravans. The evidence merely demonstrates that touring caravans have been stationed on a part of the site where it was envisaged that touring caravans would be stationed, albeit in closer proximity to the river.
11. Moreover, whilst condition 2 of the permission only relates to the layout of part of the site nearest the river, the Council has provided a layout plan depicting the full extent of the site which shows there are only to be touring caravans on the appeal site. Whilst this is then annotated as having been superseded, it nevertheless adds further weight to my concerns that all the necessary documents and plans are not before me, and therefore the appellants evidence does not satisfy me that there are no other limitations. Indeed, other conditional matters, such as landscaping, may preclude the proposal on the appeal site.
12. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate the case on the balance of probabilities.

13. In light of my findings in respect of the main issue and that I am dismissing the appeal, for the purposes of my assessment I then need not consider whether the proposal would amount to a material change of use.

Conclusion

14. For the reasons given above I conclude the appellant has not demonstrated on the balance of probabilities that non-compliance with condition 2 of the permission can result in the lawful stationing of 16 static holiday caravans at the appeal site. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

15. The appeal is dismissed.

Paul T Hocking

INSPECTOR