The Planning Inspectorate

Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/M2840/X/22/3299164
Berry Green Park, Clopton, Kettering, Northamptonshire, NN14 3LN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Brandon Jarvis against the decision of North Northamptonshire Council.
- The application ref NE/21/01299/LDP, dated 24 August 2021, was refused by notice dated 8 November 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 the site for the stationing of 26 caravans for permanent residential use, including an additional unit on the southern part of the site.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. The application is for a LDC, not planning permission, which means that planning matters (such as compliance with national and local planning policies) can have no bearing on my determination of this appeal: rather, my assessment is confined to the narrow issue of deciding whether or not the proposed use would be lawful if begun on the date of the LDC application.[1] To assist with that task, I provided an opportunity for the parties to submit further representations on relevant matters not addressed in their original submissions.[2]

2. In view of the matters at issue, no site visit was necessary.

3. An application for an award of costs was made by Mr Brandon Jarvis against the Council. That application is the subject of a separate Decision Letter of even date.

Background and main issue

4. The Appeal Site, which extends to some 1.24 ha, lies to the rear of the former Red Lion Public House in the village of Clopton. The use of its southern part (that is, the area closest to Main Road) as a caravan site dates back to 1969, and the land has been the subject of a number of planning permissions over the years.

[1] Per S.192(2) of the Town and Country Planning Act 1990 (as amended).
[2] Specifically, (1) their views on the Court of Appeal judgment in *Mr M Wall, Mr M Black, Mrs S Wall, Mr D Birch, Mr D Carter & Mr M James v Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563, and (2) what would be the implications, for their respective cases, if I were to conclude that the 1989 Permission did not allow an unrestricted number of caravans on the appeal site.

5. The main issue in this appeal is whether, as at 24 August 2021, it would have been lawful to station 26 caravans on the Appeal Site; 13 of those 26 being stationed on the southern part, and 13 on the remainder. To determine this it is necessary firstly to establish the existing lawful use of the Appeal Site. If the proposed use falls within that existing lawful use, the LDC should be granted. If it does not, it is then necessary to consider whether the proposed use would be lawful for any other reason: for example because the time limit for taking enforcement action has expired, or because a proposed change would not amount to development because it would not be a "material change of use".[3]

Analysis

6. The first recorded grant of planning permission is dated December 1969[4], and permitted the seasonal stationing of six caravans on the southern part of the Appeal Site. In April 1983 permission[5] was granted for "Increase of caravan site from 6 to 12 static caravans", again for seasonal use. It will be helpful to consider subsequent grants of permission in more detail.

The First 1986 Permission

7. In March 1986 permission[6] was granted, on the southern part of the appeal site, for "Extension of use of caravan site to all year round (8 caravans)...in accordance with deposited plan and application No. EN/86/235" This was subject to conditions, one of which limited the number of caravans to eight, and another of which clarified that implementation of this permission would effectively supersede the two earlier grants of permission made in 1969 and 1983. It appears to be common ground that this permission was implemented.

The Second 1986 Permission

8. In December 1986 permission[7] was granted for "Repositioning of eight caravans permitted on plan EN/86/235...in accordance with deposited plan and application No. EN/86/1195." This was subject to conditions, one of which stated that the permission was limited to the repositioning of eight caravans within the site previously permitted by the First 1986 Permission, and did not extend to the stationing of four additional caravans as shown on the submitted plan.

The 1989 Permission

9. In September 1989 permission[8] was granted for "Repositioning of eight mobile homes…in accordance with deposited plan and application No. EN/89/835". Unlike the two permissions granted in 1986, it was not subject to a condition imposing a limit on the number of caravans, and it applied to the whole of the Appeal Site rather than just the southern part. The Appellant and the Council both interpret this to mean that, in the absence of a condition limiting numbers, the grant of permission is for the use of the land as a caravan site by an unrestricted number of caravans. I do not agree with that interpretation.

[3] S.191(2) of the 1990 Act sets out what is "lawful" for these purposes.
[4] Ref OTR/69/138
[5] Ref EN/83/418
[6] Ref EN/86/235
[7] Ref EN/86/1195
[8] EN/89/835 dated 6 September 1989

10. As both parties rightly note, in line with the judgments in *I'm Your Man*[9] and *Cotswold Grange Country Park*[10], the simple fact that the description of development contains reference to a specific number of caravans does not limit the use of the land to that number. But while case law has established that if a limitation is to be imposed on a permission it has to be done by condition, that does not mean that the description of development granted by the permission itself can somehow be ignored. The meaning and scope of a planning permission must be interpreted as a whole, consisting of the grant of permission, the conditions imposed, and the reasons for their imposition.

11. I drew the parties' attention to the Court of Appeal's judgment in *Winchester City Council* [11] because it contains helpful clarification about the application of the *I'm Your Man* line of authorities. Sullivan J said: *It is possible that the use of the word "limitation" in the judgments has contributed to the misunderstanding of the effect of the "I'm Your Man" line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. … If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use.*

12. The Appellant rightly notes that the *Cotswold Grange Country Park* case, which is part of the *I'm Your Man* line of authorities, is analogous to the current appeal: the description of development refers to a specific number of caravans, there is no condition limiting their number, and the proposal at issue is an increase in that number. The important point is that, in the absence of a condition limiting numbers, the question is whether (as a matter of fact and degree) a material change of use would take place. In *Cotswold Grange Country Park*, Hickinbottom J remitted the case to the Inspector to decide whether the siting of six additional caravans for residential purposes would amount to a material change of use: he did not hold that the development permitted by the planning permission already granted permission for those extra caravans.

13. Here, the development permitted by the 1989 Permission is described as the repositioning of eight mobile homes. The term "repositioning", as opposed to (for example) "stationing", indicates that the permission relates to caravans that were already permitted to be on the land, in accordance with earlier grants of permission. This is reflected in the terms of condition no. 8, which states: *Before any of the mobile homes the subject of this permission are occupied their precise location on the site shall have been agreed with the local planning authority.* The mobile homes which were "the subject of this permission" were the eight referenced in the description. The absence of a condition specifically restricting the number of caravans on the site does not have the effect of altering the description of development in the grant itself: it does not change what the planning permission is actually for.

14. In my judgment, the 1989 Permission cannot reasonably be interpreted as permitting the use of the Appeal Site simply as a "caravan site", for the

[9] *I'm Your Man Ltd v Secretary of State for the Environment* (1999) 77 P&CR 251
[10] *Cotswold Grange Country Park v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin)
[11] *Mr M Wall, Mr M Black, Mrs S Wall, Mr D Birch, Mr D Carter & Mr M James v Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563

stationing of an unrestricted number of caravans. Keeping the proposition that *the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself* clearly in mind, the development permitted by the 1989 Permission is the repositioning of eight mobile homes.

15. The description of development includes the phrase "…in accordance with deposited plan and application EN/89/835", and the Appellant contends that this includes "approved" plans showing alternative site layout plans for 25 mobile homes. The documents supplied by the Appellant from the Council's planning register for the 1989 Permission include plans stamped with the Council's "EN/83/835" reference, which show floor plans, elevations and "proposed revised layout 8 residential units". It is reasonable to proceed on the basis that these stamped and dated documents are approved plans.

16. There are three other layout plans which have not been stamped, and contain no other apparent reference to the application which resulted in the 1989 Permission. Each one shows a different layout for the Appeal Site: "Scheme A" and "Scheme B" for 23 units, and "Scheme C" for 25. The evidence of the Appellant is that the 1989 Permission was implemented in accordance with the plan showing the revised layout of 8 units; that this was the layout recorded in the subsequent 1990 Site Licence plan; and was also shown as the "existing" layout in the 2005 planning application which led to the 2006 Permission. It is not clear when or why the three "alternative" layout plans were submitted, but I can see no justification for treating them as plans approved by the 1989 Permission.

17. In summary, I conclude that the development permitted by the 1989 Permission is the repositioning of eight mobile homes. The stationing of a greater number of caravans on the site would be a change to what was permitted. Whether or not that change amounted to a material change of use would be a question of fact and degree.

The 2006 Permission.

18. In March 2006 Permission was granted on appeal[12] in respect of an application to vary the terms of the First 1986 Permission: specifically, to amend the condition restricting caravan numbers to eight, so as to allow the stationing of four more caravans on the southern part of the Appeal Site. This 2006 Permission was granted subject to the same conditions as the First 1986 Permission, save that in place of a condition limiting the number of caravans to eight, it had a condition limiting the number of caravans to twelve.

19. The Appellant contends that by application of the principle established in *Newbury*,[13] the 2006 Permission was unnecessary, such that its condition limiting the number of caravans does not bite. Put briefly, existing use rights may be taken away by a condition imposed on a planning permission for the development of the land. But in *Newbury* the House of Lords held that such rights are not lost if the permission on which the condition was imposed was not actually necessary; further, the owner is not precluded by virtue of having sought and obtained such permission from subsequently relying on pre-existing use rights, and ignoring conditions imposed on the permission.

[12] APP/G2815/A/05/1192423 dated 6 March 2006
[13] *Newbury District Council v Secretary of State for the Environment* [1981] AC 578

20. Had I concluded that the 1989 Permission was for the use of the whole Appeal Site by an unrestricted number of caravans, I would then have gone on to consider the applicability of the *Newbury* principle on that basis: there is clearly an argument that the 2006 Permission – which effectively increased the limit for caravans on the southern part of the Appeal Site from eight to twelve – would in that case have been unnecessary, because the owner could simply have relied on the 1989 Permission to place as many caravans on the southern part of the Appeal Site as they wished. They would not have been precluded from doing so by having applied for the 2006 Permission. However, for the reasons set out above, I have concluded that the 1989 Permission was not for the use of the whole of the Appeal Site as a caravan site for an unrestricted number of caravans: it was for the repositioning of eight mobile homes.

21. The Appellant notes that the appeal decision which granted the 2006 Permission makes no mention of the 1989 Permission, and suggests that it was overlooked by mistake. But in the context of my findings above I see no reason for the appeal decision to reference the 1989 Permission; or indeed the Second 1986 Permission, about which it is also silent. Both of those grants of permission were for the "repositioning" of the eight mobile homes already permitted by the First 1986 Permission. The matter at issue in the appeal was the numerical limitation imposed by condition on the First 1986 Permission, which remained the operative permission governing the use of the southern part of the Appeal Site.

22. Increasing the number of caravans on this land from eight to twelve would have conflicted with the condition imposed on the First 1986 Permission, and so planning permission for this increase (either through an express grant, or by the "variation" of the condition) was needed. The evidence indicates that the 2006 Permission was implemented, through the stationing of 12 caravans in accordance with the approved plan. Thus began a new chapter in the planning history of the southern part of the Appeal Site, with the 2006 Permission replacing the First 1986 Permission as the operative permission governing its use by an increased number of caravans.

23. I conclude that the *Newbury* principle cannot be relied upon, in this case, to enable the Appellant to disregard the 2006 Permission and its conditions.

The 2020 LDC

24. In July 2020 the Council issued a LDC for *the stationing [of] 25 caravans for permanent residential use on the site at Berry Green Park*. The plan attached to that LDC showed 12 caravans on the southern part of the Appeal Site, and 13 stationed elsewhere on the Appeal Site. The Council has explained that it issued the 2020 LDC on the basis that the 1989 Permission allowed an unrestricted number of caravans on the appeal site, while the more recent 2006 Permission limited the number of caravans permitted on the southern part of the site to 12. It determined that since the plan submitted with the LDC application showed no more than 12 caravans on that southern part of the site, the LDC should be issued.

25. For the reasons set out above, I do not agree with the proposition that the 1989 Permission allows an unrestricted number of caravans on the Appeal Site. But be that as it may, S.192(4) of the 1990 Act provides that *the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is*

instituted or the operations are begun, in any of the matters relevant to determining such lawfulness. The undisputed evidence of the Appellant is that the site is now used for the stationing of 25 residential mobile homes, in accordance with the terms of the 2020 LDC.

26. It follows that the existing lawful use of the Appeal Site, following the issue of the 2020 LDC and the institution of the use therein certified, is now for the stationing of 25 caravans for permanent residential use.

The implications of all this for the LDC currently sought

27. The Appellant now seeks a LDC for the stationing of 26 caravans on the appeal site. The plan submitted with the application shows that 25 of these caravans would be located in the same positions as the 25 shown in the 2020 LDC Plan, with the additional caravan located in the southern part of the Appeal Site, taking the number of caravans stationed in this area from 12 to 13.

28. Clearly the proposed stationing of 26 caravans on the Appeal Site would not fall within the existing lawful use certified by the 2020 LDC, which is for 25. It is therefore necessary to consider whether there are any other considerations that would render the proposal lawful.

29. The Appellant contends that since the siting of one additional caravan would not amount to a material change of use from the 25 certified as lawful by the 2020 LDC, the proposal would not constitute development requiring planning permission, and so the requested LDC should be issued. However, the question of whether or not there would be a material change of use would only arise if the numerical limitation imposed by condition on the 2006 Permission could be disregarded. For the reasons set out above I have found that the *Newbury* principle does not apply in this case: the 2006 Permission was necessary, and remains relevant and extant. It contains a condition restricting the number of caravans stationed on the southern part of the Appeal Site to twelve. Should more than twelve caravans be stationed on that part of the Appeal Site, there would be a breach of that condition, against which it would be open to the Council to take enforcement action.

30. It follows that since enforcement action could be taken against the proposed stationing of 13 caravans on the southern part of the Appeal Site, the proposal described in the LDC application would not be lawful in the terms of s.191(2) of the 1990 Act (as amended).

Conclusion

31. For the reasons given above I conclude that the application for a LDC in respect of the stationing of 26 caravans for permanent residential use, including an additional unit on the southern part of the site, should be refused and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

32. The appeal is dismissed.

Jessica Graham

INSPECTOR