



Appeal Decision

Site visit made on 20 March 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/D1265/X/22/3299755

Shamba Holiday Park, East Moors Lane, St Leonards and St Ives, BH24 2SB

- 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 M Taylor - Shamba Holidays Ltd against the decision of Dorset Council.
 - The application ref 3/20/0626/CLP, dated 9 April 2020, was refused by notice dated 8 June 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 use of land for siting 91 static caravans for holiday or residential use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant, and it is not therefore an issue for me to consider in the context of an appeal under section 195 the Town Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and the relevant planning law and judicial authority.
3. The onus of proof rest of the appellant and the level of proof is on the balance of probabilities.

The site and relevant planning history

4. The holiday park comprises 150 pitches with electric hook-ups for touring caravans on a site of about 2.83 hectares. There is a building containing a reception, shop, laundry, social club and bar, indoor pool, toilets and changing facilities.
5. There have been a number of planning applications on the site since 1974, with the most relevant to this appeal being:
 - i) 03/00/0340/FUL - station 150 touring units – split decision refusing a warden's lodge but permitting the use of 150 touring caravans subject to 5 conditions; (1) standard 5 year time limit; (2) limited to 150 touring units; (3) no caravan shall remain on site for more than 28 consecutive nights; (4) touring caravan park only and no sales of caravans, tents or other accessories; (5) site shall not be occupied outside 1 February to 1 January in successive years (the 2000 permission).

- ii) 03/00/1093/FUL – carry out development permitted under 03/00/0340 without compliance with condition 3 as amended by letters dated 5/12/2000, 15/5/2001 and 30/5/2001. Approved subject to the standard time condition. An informative states 'This application removes only condition 3 of planning permission 3/00/0340 and all other conditions on that permission remain in effect' (the 2001 permission).

Main Issue

- 6. The main issue is whether the Council's decision to refuse the LDC was well founded and in particular, firstly, whether the proposed use of the site for the stationing of 91 static caravans for holiday/residential use would be in breach of any condition or limitation imposed on an implemented and extant permission, and secondly, whether the development amounts to a material change of use.

Reasons

- 7. In summary, the appellant contends that the conditions on the 2000 permission have no relevance to the 2001 permission where they were not included as conditions on the decision notice; that the proposed use of the site would not be materially different to that which they argue is lawful through the 2001 permission; and that the number of static caravans (91) compared to the permission for 150 touring units would not represent a material change of use.
- 8. The Council, however, consider that the informative note on the 2001 permission indicates that, except for condition 3, the conditions on the 2000 permission are in force. Accordingly, the siting of 91 static caravans for residential and holiday occupation would represent a breach of condition. In addition, or in the alternative, the planning permission imposed a restriction on the use of the site (irrespective of what conditions remain enforceable in relation to it) for touring units and the proposal would represent a material change of use of the land allowed in the 2001 permission.

The extant permission

- 9. The Council accepts that the 2001 permission is the extant permission on the site. It is clear from that permission, when looking at the description of the application as modified by the letters referred to and to the informative, that the Council fully intended that only condition 3 would be removed from the 2000 permission. The Council attached a copy of the 2000 permission to the 2001 decision notice.
- 10. The general principles of interpretation indicate that where a planning permission is clear, unambiguous and valid on its face, then generally regard may only be had to the planning permission itself but where a permission incorporates an application by reference then the application is treated as having become part of the permission. This is the position established in *Ashford*¹, although the extent of extraneous material that can be considered is to be narrowly construed. In *UBB Waste Ltd*² it was held that where there are documents incorporated into the permission or the conditions by reference, a holistic view has to be taken even where there may be some inconsistency.

¹ R v Ashford BC v Shepway BC [1999] PCLR 12

² UBB Waste Ltd v Essex CC [2019] EWHC 1924 (Admin)

11. A permission under s73 can only take effect as an independent permission to carry out the same development as previously permitted, but subject to new or amended conditions. In this case, the 'same development' is 'the (s)tationing of 150 Touring Units' as described in the 2000 permission. The 2001 permission expressly states the development as 'carry out development permitted under 03/00/0340 without compliance with condition 3 as amended by letters dated 5/12/2000, 15/5/2001 and 30/5/2001'. A simple and straightforward reading of the 2001 permission indicates that it needs to be considered in the context to the 2000 permission which is not inconsistent with it.
12. In *Lambeth*³, the Court considered whether a condition restricting the use of the premises should be implied into a planning permission granted under s73 by the local planning authority or, alternatively, whether the planning permission should be interpreted as containing such a condition. It was held that '...whatever the legal character the document in question, the starting point - and usually the end-point - is to find "the natural and ordinary" meaning of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense" and "The obvious and ... only natural interpretation is that the Council was approving what was applied for." As an obiter observation, it is possible for that conditions may have continuing effect or continued operation where both permissions can continue to be relied on. I note that the interpretation of this case has been criticised by the appellant, but it is nevertheless a useful starting point.
13. In the *Norfolk*⁴ judgement it was held that an inspector was not wrong in an LDC case to find that a proposal was contrary to a condition on a 2004 decision after finding that a subsequent 2016 s73 application had been implemented.
14. The three letters referred to in the decision are from the appellant's agent in which the agent agrees that the application can be amended to read "Carry out development permitted under 3/00/0340 without compliance with condition 3" subject to the proviso that the Council confirms that condition 4 will not prevent the sale of tents and other goods ancillary to the use of the land as a camping and touring caravan park. The appellant contends that in the absence of further documentation the response is a conditional response that is nothing more than a suggestion and that it is unambiguous that the application that led to a grant of the June 2001 permission was an application to remove all relevant conditions.
15. However, I do not accept the appellant's conclusions on the evidence of the letters and the wording of the description in the decision notice. I find that despite the Council's somewhat casual approach to the application correspondence, the description of development is not ambiguous but clear and precise with the description being a limitation on the development. Reference is expressly made to carrying out the development without compliance with condition 3. The description of the development makes no reference to conditions 1,2, 3 and 5 as it was unnecessary to do so. Furthermore, the description reflects the wording as deemed to be acceptable to the agent in his third letter. I attach little weight to the agent's proviso as it would have been open to the agent to chase this up with the Council at the time.

³ *Lambeth v S SHCLG and others* [2019] EWCA Civ 844.

⁴ *Norfolk Caravan Park Ltd v SSHCLG and Broadland DC* [2021] EWHC 2114 (admin)

16. The Council relies on the informative contained in the 2001 permission but the Planning Practice Guidance⁵ makes it clear that informative notes do not carry any legal weight and cannot be used in lieu of conditions.
17. The Guidance⁶ also states that "For the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect." Clearly this has not been done, but I consider that taken as a whole, the decision notice, the reference to the correspondence and the informative, and to the attached earlier decision provide the clarity that the Guidance seeks to achieve and I have no doubt that the applicant at the time knew exactly what development was permitted on the site.
18. In concluding on the interpretation of the extant permission, it is evident that certain aspects in the determination of the application did not follow best practice, failed to reimpose the conditions from the 2000 permission still relevant to the 2001 permission (other than in pinning a copy of the 2000 permission to the decision notice), and, in placing reliance on an informative to condition the permission. Notwithstanding these deficiencies, the fact that the 2001 permission is not inconsistent with the 2000 permission in respect of the description of development relating back to 'the (s)tationing of 150 Touring Units' is significant. As set out in the Winchester case⁷, the main options for a local planning authority to control what is permitted is through description and condition. It is accepted that the established principle is that the description of development sets out what can be done, and the conditions limit the manner of use. In this appeal, 'what can be done' is to carry out development permitted under 03/00/0340 without compliance with condition 3. This is clear on its face and unequivocal.
19. The Council cites the St Anne's Court case⁸ where it was held that there is an obvious functional connotation to the description of a touring caravan as opposed to a static caravan. As the description of development in the 2001 permission references the 2000 permission that in turn refers to use by touring units, the description imposes a functional limitation, and this raises the question as to whether the proposed use would represent a material change of use.
20. I find that it has not been demonstrated on the balance of probabilities that the use applied comes within the scope of the permission. The use would conflict with condition 2 which limits the use of the site to touring units and to condition 4 which limits the use of the site as a touring caravan park only. It also contradicts with the description of the development in the 2000 permission, without which the 2001 permission cannot be understood.

Does the development amount to a material change of use?

21. The MWRL⁹ case established that the test for a material change of use is whether there has been or would be a change in the character of the use.

⁵ Paragraph: 026 Reference ID: 21a-026-20140306

⁶ Paragraph: 040 Reference ID: 21a-040-20190723

⁷ Winchester CC v SSCLG [2015] EWCA Civ563

⁸ St Anne's Court Dorset Ltd v SSHCLG and Dorset Council [2021] EWHC 2954 (QB)

⁹ Hertfordshire CC v SSCLG and Metal Waste and Recycling Ltd [2012] EWCA Civ 1473

22. The 2000 permission is for the stationing of 150 touring units and condition 4 also refers to touring units. Although coming within the statutory definition of a caravan, static caravans are distinguishable in terms of scale and degree of permanence. Static caravans are usually larger than touring caravans; they have a different appearance; they are often delivered to site in two parts and bolted together; they provide opportunities for permanent residential occupation with the potential for domestic paraphernalia as the units frequently have decking, porches and other attachments. Static caravans can represent a more permanent fixture on a site than touring vans which may come and go according to the season. Indeed, at my site inspection, the appeal site, whilst having a good number of touring vans some with awnings apparent, they nevertheless had the appearance of being of a more transitory nature than static caravans as the site has an open, spacious appearance and informal character with the grass field being evident. The appellant's illustrative layout shows how 91 static caravans could be accommodated on site. This shows a formal layout which, if developed in that manner, could eventually have the appearance of a cramped estate of chalet bungalows, given the wide flexibility in the statutory definition of caravans.
23. The appellant states that it is its intention to leave caravans on the site permanently, so its past use is not an indicator of how it would be used in the future subject to condition 5 from the 2000 permission (if carried through) which prevents occupation between 1st January and 1st February. Whilst this is noted, the Council points out the constructional differences between touring caravans which would discourage use throughout the year, as compared to the static caravans that can be constructed to a residential build standard suitable for occupation all the year round and be more likely to facilitate permanent residential occupation.
24. The appellant considers that the proposed use would not represent a material change of use as it would avoid visual harm associated with intensification. It is argued that the proposed use would lead to a significant reduction in the intensity of the use of the site. It is also stated that the touring caravans could be sited for up to 12 months of a year without being moved thus reflecting the more fixed nature and use of static caravans.
25. The Council contends that the nature of and frequency of vehicular trips to the site would be more intensive and of a different pattern to seasonal holiday use associated with touring units. Whilst this would likely be the case in general terms, in the absence of any submitted existing and predicted traffic movements to demonstrate whether this would have a such an impact on the character of the use the site for it to be significant, I attach only modest weight to this argument.
26. As a matter of fact and degree I find that there would be a material change in the definable character and appearance of the current use of the site from that of a site for 150 touring caravans to one for the siting 91 static caravans for holiday or residential use. This would represent a material change of use requiring planning permission.

Conclusion

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 use of land for siting 91 static caravans for holiday or residential use 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