



Appeal Decision

Hearing held on 8 August 2023

Site visit made on 7 August 2023

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 9th October 2023

Appeal Ref: APP/J3720/X/23/3320951

Edkins Park, 125a Aston Cantlow Road, Wilmcote, Warwickshire, CV37 9XP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Park Venture Ltd against the decision of Stratford-on-Avon District Council.
 - The application ref 22/01027/LDE, dated 4 April 2022, was refused by notice dated 30 November 2022.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is the existing use of the entire site (4.5 acres) as a caravan site in accordance with planning permission ref 63/5/8.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Park Venture Ltd against Stratford-on-Avon District Council. This application for costs is the subject of a separate decision.

Preliminary Matters

3. I have taken the postcode in the banner heading above from the LDC application form as there is a typographical error on the appeal form in this respect. I have also taken the description of the existing use for which an LDC is sought from the LDC application form. That application form states that the grounds for the LDC application are that the entire site benefits from planning permission refs 61/6/34 (the 1961 permission) and 63/5/8 (the 1963 permission). There is no reference to the 1961 permission within the description of the existing use. Nevertheless, it is clear from the evidence before me, including that heard at the Hearing, that the 1961 permission is relevant to this appeal as it provides the background to the 1963 permission.
4. Furthermore, the Council had questioned, prior to the Hearing, whether the LDC had been submitted under the correct section of the 1990 Act. However, both parties agreed at the Hearing that the LDC seeks to establish through the interpretation of the 1963 permission that the use of the entire site as a caravan site has planning permission. I have no reason to disagree and I have dealt with the appeal on this basis.

5. At the Hearing, to enable me to view the original documents associated with the 1961 and 1963 permissions, a representative from both parties accompanied me to access and use the Council's microfiche reader. On resuming the Hearing all parties in attendance were informed of the agreed information that could be ascertained from the documents.
6. I note that the evidence before me refers to the planning merits of the case. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.

Reasons

Background

8. Section 17 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) applied to existing caravan sites not covered by a specific planning permission. When an application was made for a site licence for such a caravan site, the local authority who received the application were required to transmit it to the local planning authority who could grant planning permission for the caravan site just as if the application to the local authority for a site licence under this Act had, in fact, been an application to the local planning authority for planning permission under the Town and Country Planning Act 1947 (the 1947 Act).
9. Unless, before the end of six months from the date of the application for the site licence, the local planning authority had either granted the requisite planning permission; or served an enforcement notice under section 23; or begun an action under section 26 of the 1947 Act to bring about a discontinuance of the caravan site, then the requisite planning permission under the 1947 Act for the use of the land as a caravan site was deemed to have been granted without condition or limitation of any kind by virtue of section 17(3) of the 1960 Act. The site licence under the 1960 Act then followed as a matter of course under section 3(4) of that Act.
10. For the purposes of section 17 of the 1960 Act an "existing site" was defined within section 13 as, amongst other things, land which was in use as a caravan site at the commencement of the 1960 Act, 29 August 1960, and which was also used as a caravan site on the 9 March 1960.
11. Section 1(4) of the 1960 Act states that a "caravan site" means '*land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*'.

12. In regard to this site, on 17th March 1961, 7th April 1961 and 26th April 1961, the Public Health Inspector sent letters requesting that an application for a caravan site be made under the 1960 Act. The letter dated 17th March goes on to state that an application form has been enclosed, that the application should have been made before the 29 October 1960 and requests that the application form is completed and returned with a site plan to a scale of not less than 1/500th.
13. An application for a licence to use land as a caravan site was received on 3 May 1961 and it was accompanied by a plan (the 1961 plan). Nevertheless, even though section 17(1) of the 1960 Act states that an application under that section should be made prior to 29 October 1960 it also states, '*or within such longer period as the local authority to whom the application is made may, having regard to the special circumstances of the case, allow*'. Therefore, even though this application for a licence to use land as a caravan site was not submitted prior to 29 October 1960 the procedure outlined in section 17 of the 1960 Act was followed in all other respects and the local authority had invited the application.
14. Within the application form the address or description of the site for which the licence was required is Aston Cantlow Road, Wilmcote and the acreage of the site is stated as 4½. The maximum number of caravans proposed to be stationed on the site was 2. Other details within the application form state that the site licence is required for a permanent caravan site and that the site has been used as a caravan site since 1950 and on the relevant dates.
15. The 1961 plan indicates the position of a roadway from Aston Cantlow Road, what appear to be buildings alongside the latter, the positions of 2 caravans, buildings identified as sheds, pig pens, garage and bungalow and a water supply. There are a few annotations on the plan which appear to include the field number '50', 4½ acres, 'R's adjacent to the caravans and the numbers 123, 125, 127 and 129 adjacent to the buildings alongside Aston Cantlow Road. The lines depicting the roadway join lines that surround the caravans, sheds, pig pens, garage, and bungalow in a roughly square shape.
16. Warwickshire County Council (WCC) wrote a letter to Alcester Rural District Council (ARDC) in July 1961 referring to '*the application to your Council for a site licence in respect of the stationing of 2 caravans on land in O.S. enclosure 50*'. It goes on to state that '*the Sub-Committee accepted the contention that existing use rights had been established and accordingly decided that permanent planning permission should be granted*'.
17. On 14 July 1961 planning permission (61/6/34) was granted, by ARDC, for a '*proposed Caravan Site at Aston Cantlow Road, Wilmcote for two Caravans only*' in accordance with the plan and application submitted to the Council. No conditions were attached to that permission. On the 27 September 1961 site licence No 29 was issued '*to allow the land situate at Aston Cantlow Road, Wilmcote. O.S. Enclosure 50 to be used as a caravan site subject to*' a number of conditions. These conditions included that not more than 2 caravans were to be sited on the site, each caravan was to be sited as set out in the site plan and a wash-hand basin and water closet to be provided for each caravan and for all foul drainage to be connected to a properly constructed septic tank and filter.

18. On the 30 January 1963 an amended caravan site licence was issued and the conditions on that licence included; *that not more than five trailer caravans ...shall be placed on the site... as set out in the sketch plan to the south west part of the site; the caravans at present on the site to be removed together with the attached structures; a carriageway ...to be taken to the caravans; a communal toilet block to be provided.* The sketch plan cited within this licence is not part of the evidence before me but 4½ acres is stated as the acreage of the site on the licence application form.
19. In April 1963 a planning application for a caravan site with toilet block was submitted to ARDC. The covering letter accompanying the application indicates that drawing No S/63/19/1 (the 1963 plan) was submitted with the application forms, that a licence for 5 caravans had been granted and that a copy of '*our Septic Tank Detail No. S.D.4*' was also included for ARDC's approval. The application form states that the address or location of the land to be developed is '*Off Aston Cantlow Road, Wilmcote. See Site Plan.*' The answer to question 5 on the forms states that the purpose for which the land and/or buildings are now used is '*Unused land with caravan camp licence No 29 (amended)*'.
20. The 1963 plan is in black and white and includes elevations, a ground plan and section of the toilet block. It also includes a block plan and location plan. The block plan shows the south-western part of the appeal site; a roadway through that part of the site; five rectangles which, are likely used to represent caravans, a 'T' shaped block that is annotated – proposed lavatory block, soakaways, standpipes, septic tank, irrigated outfall and a carpark. The southern and western boundaries are shown utilising a 'double wavy' line and there is a line that extends from the southern boundary to the edge of the carpark and continues along the northern side of the roadway (the 1963 Line). The location plan shows the wider area around the appeal site including Aston Cantlow Road, the dwellings fronting onto that road, the roadway, the lavatory block, the septic tank, the 1963 line and there is an annotation '*proposed site*' with an arrow pointing towards the southern side of the roadway.
21. In June 1963 the County Planning Officer, Mr Brooks, wrote to ARDC stating that '*the proposed toilet blockI consider to be permitted developmentand it is noted that the land to which this application relates already enjoys existing use rights which were established by61/6/34*'. Nevertheless, on 21 June 1963 ARDC granted the 1963 permission for '*proposed caravan site with toilet block off Aston Cantlow Road, Wilmcote*' in accordance with the plan and application submitted to the Council... *subject to the conditions ... A connection being made to the main sewer as and when available and to all sink waste and stand pipe gulleys being connected to the foul drainage system (not to soakaways as shown)*'.
22. In 1999 an enforcement notice was issued in relation to the continued stationing of a mobile home on the land for residential purposes. The land shown on the plan attached to the enforcement notice covered a large proportion of the appeal site. In 2008 an LDC was granted for continued use of the south-western part of the appeal site bounded by the 1963 Line as a caravan park without restriction on the number of residential units accommodated thereon. I note that the applicants for the 2008 LDC submitted that application without prejudice to their case that the 1963 permission applied to the whole of the 4½ acres. There are currently 14 caravans stationed on the south-western part of the site.

At the Hearing planning decisions¹ and the associated approved drawings relating to proposed garages on the appeal site were provided to me and it appears that the garage blocks approved in 2013 have been built.

The 1961 and 1963 permissions

23. There is no dispute that the 1961 and 1963 permissions are still extant. There is no evidence before me to indicate that there has been a material change of use of any part of the appeal site since 1963. The dispute in this case relates to the interpretation of the 1961 and 1963 permissions in respect of the site area/s that they apply to. As stated within *Swalecliffe Chalet Owners' Association v First Secretary of State* [2004] EWHC 2666 (Admin) (the Swalecliffe judgment) highlights that the 1960 Act generated a great deal of litigation. I acknowledge that *Williams-Denton v Watford Rural District Council* [1963] 15 P. & C.R. 11 (the Williams-Denton judgment) and *R v Axbridge Rural District Council ex parte Wormald* [1964] 1 W.L.R. 442 (the Axbridge judgment) did not relate to cases where express planning permission had been granted.
24. Nevertheless, those judgments considered what constituted the 'existing site' for the purposes of the 1960 Act. Lord Denning M.R. in the Axbridge judgment stated that *'In order that land should be "used in conjunction with land on which a caravan is so stationed" it must be used immediately and directly in conjunction with it. For instance, land for a latrine or on which a motor-car stands, or land laid out as a playground, would be part of the site; but not waste land over which children or adults may run from time to time. I agree with the Divisional Court that the "existing site" here is the actual land on which the caravan stands and a very small area surrounding it, say, 20 feet all round, such as the district council in their licence prescribed.'*
25. The Swalecliffe judgment states that *'the starting point must therefore be that planning permission would have been granted in 1961 for so much of the application site as was an "existing site" for the purposes of the 1960 Act, and planning permission would not have been granted for so much of the site as was not an "existing site".'* The 1961 permission is an express permission and there is no evidence before me to indicate that ARDC acted unlawfully in granting that permission under section 17(2) of the 1960 Act. Whether the evidence before me today would support the issuing of the planning permission on all or part of the appeal site is not under consideration. The question is what was the area that was considered to constitute the 'existing site', and which was therefore granted express planning permission through section 17(2) of the 1960 Act. Furthermore, there is no dispute that the application and the 1961 plan can be treated as forming part of the 1961 permission.
26. The application form and the 1961 plan cite an area of 4½ acres. However, it is not clear if the annotation on the plan in this respect was an addition or not. The plan is not to scale but it is apparent that the shape and size of the site shown correlates to the appeal site.
27. The 2 caravans that were stationed on the application site and cited within the planning permission are shown as solid black rectangles on the 1961 plan and 2 'R's are written with lines extending towards them. The Council considers that the 'R's are a reference to the red line for the application site taking into

¹ 08/03131/FUL & 13/00403/FUL

account the Axbridge judgment. It may have been a common practice to add the 'R' to plans when they were stored as microfiche as argued by the Council. However, there is no evidence to indicate who added the 'R's on the plan and on what basis they were added. It is not apparent from the details on the 1961 plan or the application form whether the remainder of the land shown on the 1961 plan, including the bungalow, sheds, garage and pig pens, was or was not used immediately and directly in conjunction with the land on which the 2 caravans were stationed.

28. Therefore, it is ambiguous as to whether the whole or part of the 4½ acres cited on the application form constituted the existing site for the purposes of section 17 of the 1960 Act. I was told at the Hearing that the then owner of the site (Mr Edkins) had lived in the bungalow (shown on the 1961 plan) at some point and later moved to 117 Aston Cantlow Road. No confirmation could be given as to when that move was made. The bungalow was retained on the site. Within the application itself there is no evidence to indicate how the sheds, garage and the remainder of the land were used, or if the pig pens were used to house pigs in, prior to the application being made in 1961.
29. The site licence granted in September 1961 cites the required provision of a number of items, including a wash hand basin, water closet and hardcore footpath on the caravan site. If the local authority had considered that the 'existing site' was confined to the footprint of the 2 caravans shown on the 1961 plan it is highly unlikely that they would have required the provision of those items. Moreover, in January 1963 an amended site licence for *'not more than five trailer caravans ... to the south west part of the site'* was granted by ARDC. The phrase *'south west part of the site'* indicates that where the five caravans were to be stationed was part of an overall site. In addition, WCC considered in June 1963 that planning permission was not required for the toilet block proposed in the 1963 application and that the land to which the application related already enjoyed existing use rights.
30. These factors provide evidence to help resolve the ambiguity relating to the area considered to be the 'existing site' by the local authorities at that time and granted planning permission in 1961. Overall, the evidence indicates that WCC and ARDC considered that the existing site was not limited to the areas shown as the footprints of the caravans on the 1961 plan. Moreover, there is no evidence to indicate that the 1961 permission was restricted to part of the 4½ acres. As such, I find that on the balance of probabilities that the area covered by the 1961 permission is the 4½ acres which appears to be shown on the 1961 plan bounded by the black lines.
31. The application form for the 1963 permission does not state the size of the application site. The address is given as *'Off Aston Cantlow Road, Wilmcote. See Site Plan.'* As the 1963 plan is in black and white there is no 'red line' to denote the application site and there are no 'R' annotations on the plan. Therefore, the area that formed the application site for the 1963 permission is also ambiguous. The appellant argues that the application site is the whole 4½ acres, but the Council considers that the application site covers the south-western part of the appeal site bounded by the 1963 Line.
32. The 1963 line appears to be the same thickness and general appearance as other single lines that have been drawn to depict boundaries and features on the location and block plans. However, there is no evidence to indicate that

the 1963 Line related to a physical feature or boundary. No feature/boundary is visible on that part of the site on the aerial photographs dated 22 August 1964 and 20 September 1965 (the aerial photographs). Moreover, the 1963 Line is clearly apparent as a vertical line on the block plan and a horizontal line on the location plan and 'fold lines', from where the 1963 plan was folded at some stage, are apparent elsewhere on that plan. The 1963 Line is distinct from those fold lines. In addition, the 'proposed site' annotation and arrow point towards the south-western part of the appeal site. The 'double wavy' line on the southern boundary traverses past the 1963 Line. However, in my experience a 'double wavy' line was regularly used on plans to denote a hedge line. There is no dispute that hedges can be seen on, the aerial photographs, running along the boundaries that are shown with 'double wavy' lines on the 1963 plan.

33. Moreover, the answer to question 5 on the application form indicates to a reasonable reader that the land that constitutes the application site is currently unused land associated with the caravan site licence. The sketch plan associated with the 1963 site licence is not before me, but taking into account all of the above it is more likely than not that the 1963 site licence covered the entire 4½ acres. Nevertheless, the answer to question 5 provides evidence that the application site for the 1963 permission covered part of the area associated with that site licence and not all of it.
34. The septic tank details were cited within the covering letter submitted with the application. A septic tank is also cited on the notice of intended new buildings form that accompanied the 1963 application. Nevertheless, the description of development on the application form and on the 1963 permission is '*caravan site with toilet block*'. The septic tank and irrigated outfall are shown on the 1963 plan to the east of the 1963 Line outside of the south-western part of the site.
35. Drainage works are an essential part of a toilet block and they should be within the red line/application site. Moreover, the septic tank is not specifically mentioned in the condition attached to the 1963 permission even though it refers to the 'foul drainage system'. There is no dispute that that condition would not meet the six tests cited within the Planning Practice Guidance and paragraph 56 of the National Planning Policy Framework (the Framework). Nonetheless, it is apparent that ARDC wanted the development to be connected to the main sewer when that was available.
36. The septic tank and outfall would not have been within the application site if the 1963 Line is treated as a red line to that site. This is an anomaly, and it is not known why the land on which the septic tank and outfall would not have formed part of the application site. However, WCC had stated that the toilet block was considered to be permitted development '*under the provisions of Class XX-111 of the New General Development Order*'. It is therefore more likely than not that the septic tank and outfall would also have been permitted development (PD) under the same provisions. They may have been treated as PD by ARDC even though they granted planning permission for the toilet block. Furthermore, they could have been excluded by error. Even if the septic tank and outfall were included in the application site, when considered with the remainder of the evidence, it does not demonstrate, on the balance of probabilities, that the whole 4½ acres formed the application site relating to the 1963 permission.

After 1963

37. I acknowledge that the enforcement notice issued in 1999 covered a large proportion of the appeal site. However, it is not known on what basis that plan was drawn up. Moreover, the enforcement notice was quashed through an appeal decision² and the Inspector was not considering whether the 1963 permission covered the whole of the appeal site before them. This does not support the appellant's case.
38. As the 2008 LDC was granted on the south-western part of the appeal site bounded by the 1963 Line it does not affect the determination of this appeal.
39. The garage blocks approved by the 2013 planning permission are not within the south-western part of the site bounded by the 1963 Line. The application site for that planning permission included a small part of the appeal site that was not within the south-western part of the site. Condition 5 on that planning permission states that *'the buildings hereby permitted shall only be used as garages and for storage ancillary to the Edkins Caravan siteand for no other purpose'*. However, that decision is of no assistance in determining the extent of the appeal site covered by the 1963 permission.
40. Correspondence from the Council dated 4 August 2000 and 7 June 2007 has also been cited by the appellant, but the views expressed by the Officer's in those letters are not a formal determination of the extent of the 1963 permission.

Conclusion

41. Taking into account all of the above, even though I have found that the area covered by the 1961 permission is the 4½ acres which appears to be shown on the 1961 plan bounded by the black lines, on the balance of probabilities, it is more likely than not that the extent of the application site for the 1963 permission was not the entire 4½ acre site but the south-western part of the site bounded by the 1963 Line.
42. I have considered whether I could modify the terms of the application and issue an LDC in different terms or issue a certificate for part of the land specified in the application. The 1961 permission was granted for *'proposed Caravan Site at Aston Cantlow Road, Wilmcote for two Caravans only'*. There are no conditions on that permission that restrict the number of caravans that can be stationed on the site. Notwithstanding the lack of conditions, that permission only expressly authorised a material change of use of the 4½ acre site for use as a caravan site for 2 caravans only. Fourteen caravans have been stationed on the south-western part of the appeal site covered by the 2008 LDC. To demonstrate that the 1961 permission makes the use of the appeal site as a caravan site for the stationing of 14 or more caravans lawful, the onus is on the appellant to show, as a matter of fact and degree and on the balance of probability, that the increase from 2 to 14 or more caravans does not constitute a material change of use. There is no evidence before me in this respect therefore I am unable to modify the terms of the LDC.
43. Moreover, the 2008 LDC has been issued on the south-western part of the site bounded by the 1963 Line. As such, another LDC certifying the same use of the same part of the appeal site serves no useful purpose.

² Ref No: T/APP/J3720/C/99/1026946

44. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the entire site (4.5 acres) as a caravan site in accordance with planning permission ref 63/5/8 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.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Harwood KC: Counsel instructed by Laister Planning

Nick Laister: Laister Planning

Nayan Gandhi: Laister Planning

FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant: Counsel instructed by Stratford-on-Avon District Council (SoADC)

Sarah Flaherty: SoADC

Alex Cosnett: SoADC

INTERESTED PARTIES:

Peter Howard

Mandy Scruby

DOCUMENTS

Doc 1: Decision Notice – 61/6/34

Doc 2: Decision Notice – 63/5/8

Doc 3: The 1961 Plan

Doc 4: Planning Approval bundle – 08/03131/FUL

Doc 5: Planning Approval bundle – 13/00403/FUL