



Appeal Decision

Hearing held on 31 October 2023

Site visit made on 1 November 2023

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 08/11/2023

Appeal Ref: APP/D1265/X/23/3324824

Stour Hill Caravan Park, West Stour SP8 5SE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Wenman of Novamere Leisure Ltd against the decision of Dorset Council.
 - The application Ref P/CLP/2021/03846, dated 5 October 2021, was refused by notice dated 24 May 2023.
 - The application was made under 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed use of land for the siting of caravans for the purposes of human habitation.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Preliminary Matter

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under s195. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Main Issue

3. I must decide whether the use of the land for the siting of caravans for human habitation would be lawful if it were instituted on the date of the application.
4. The Council considered the proposed use would not be lawful because: (i) "planning permission 2/1987/789 is physically incompatible with implemented planning permission 2/1991/710, and so further development pursuant to permission 2/1987/789 is not lawful";

(ii) "the proposal is for the stationing of an unspecified number of any type of caravan on the site, compared with the 10 touring vans that would have been permitted under planning permission 2/1988/789 [sic]¹. This would represent a material change of use for which planning permission would be required.

¹ The Decision Notice contained an error as it stated 2/1988/789 in reason 2 rather than 2/1987/789, but it is clear what was intended.

5. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Planning History

6. Given the matters at issue, it is necessary to summarise the most pertinent aspects of the site's planning history. The earliest record is a planning permission dated 12 November 1982, Ref 2/79/1011/(67), described as "carry out works to improve caravan site" (the 1982 permission). The permission related to a wider area of land than that subject to this appeal. Plan ref. 3/G237 referred to in the grant of the 1982 permission showed the location, type and numbers of caravans proposed for the wider area. It included six residential caravans in the north-east section; two areas of hardstanding, each with 10 touring caravans in the southeast and southwest sections; a recreational area, a washroom/laundry and bin/equipment storage. It is common ground that the permission was not implemented.
7. A subsequent planning permission, Ref 2/87/0789(67), was granted on 2 February 1988 (the 1988 permission). This was subject to eight conditions and related to a wider area than the land subject to this appeal, in common with the 1982 permission. The development was described as "carry out works to improve caravan site (renewal of permission)". The planning permission was expressed as being a grant of permission, as modified by plan ref. 87195.03 Rev B received 8 January 1988. This showed details of proposed new access arrangements. It is common ground that the permission was implemented.
8. On 31 December 1991, planning permission was granted under planning application ref 2/91/0710 for the erection of six garages, the relocation of two 'Permahomes' and the siting of two 'Terrapins'" (the 1991 permission). The 1991 permission was obtained in respect of land which is now known as Stour Hill Park. This previously formed the eastern half of the area covered by the 1982 and 1988 permissions. It is common ground that this permission was implemented and completed.
9. On 11 March 2003, application ref 2/2002/1098 for an LDC to use the land as a site for residential mobile homes was refused for the remaining part of the site, which is the land subject to this appeal. The case was dismissed at appeal by a decision dated 16 March 2004, ref APP/N1215/X/03/1126635 (the 2004 appeal). Despite that decision having been made some years ago, the appeal related to a very similar proposal at the same site, and I afford it significant weight.

Reasons

10. The first matter to consider relates to the scope of the 1988 permission. The legal principles applicable to the interpretation of planning permissions have been set down at length in the Courts. I consider the authorities of particular relevance below.
11. In *Trump International²*, it was held that the process of interpreting a planning permission should not be regarded as differing materially from that appropriate to other legal documents, which must be interpreted in a particular legal and factual context. A planning permission is a public document which may be relied on by parties unrelated to those originally involved. The approach is to

² *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74.

consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the planning permission and with common sense. The Court in *Lambeth*³ citing the above, summarised, whatever the legal character of 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 and in the light of common sense.

12. The general legal principles have been set out by Mr Justice Keene in *R v Ashford Borough Council ex parte Shepway DC*⁴. There is no magic formula to incorporating the application and plans into the planning permission, but more is required than a mere reference to the application on the face of the planning permission. Some words are needed sufficient to inform a reasonable reader that the application forms part of the planning permission such as ‘...in accordance with the plans and application...’ or ‘...on the terms of the application...’ The words would need to appear in the operative part of the planning permission dealing with the development and the terms in which the permission is granted. If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material, including the application, to resolve that ambiguity⁵.
13. In *Barnett*⁶ it was clarified that the *Ashford* case was concerned with an outline planning permission. When considering a full detailed planning permission, the plans and drawings describing the building works are as much a part of the description of what has been permitted as the permission itself.
14. More recently, the Supreme Court in *Hillside Parks Ltd*⁷ reiterated established principles set out in *Lambeth*, *Ashford* and *Trump International* that the interpretation of a planning permission is an objective exercise and is not concerned with what the maker subjectively intended. A planning permission is not personal to the applicant and runs with the land. It cannot be assumed that the holder of the permission will be aware of the background facts known to the person who applied for it.
15. The Council sought to argue that the 1988 permission was a full planning permission for operational development and that it incorporates plan ref 3/G237, which is expressly referenced in the lapsed 1982 permission. The description of the approved development is “carry out works to improve caravan site (renewal of permission)”. The operative words of that permission state “in accordance with the details given in the application numbered above [2/87/789(67)], as modified by plan ref 87195.03 Rev B received 8 January 1988”.
16. Plan ref 87195.03 Rev B is clearly a document of relevance since it is included within the operative words of the planning permission, that being a full planning permission with an accompanying plan. The specified plan showed altered access arrangements only. It is apparent from the face of the planning permission that the land was, or would be, used as a caravan site, and that improvements to the access were sought as shown on the plan specified.

³ *Lambeth LBC v SSCLG* [2019] UKSC 33.

⁴ *R v Ashford Borough Council ex parte Shepway DC* [1998] EWHC Admin 488.

⁵ *Slough Borough Council v SSE* (1995) JPL 1128, *Wilson v West Sussex County Council* [1963] 2 QB 764 and *Miller-Mead v MHLG* [1963] 2 QB 196, *Slough Estates v Slough BC* [1969] 21 P and CR 573, *Staffordshire Moorlands District Council v Cartwright* (1992) JPL 138 at 139, among others.

⁶ *Barnett v SSCLG* [2009] EWCA Civ 476.

⁷ *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30.

17. The Council argued that it is plain from the 1988 permission that it is for a renewal of a permission. While the words "renewal of permission" form part of the description of development, there is no reference number to identify which permission is being renewed. A holder of the 1988 permission would not necessarily be aware of the 1982 permission, nor its terms and conditions, as it is not incorporated by reference. The application that led to the 1988 permission is not available. As such, I cannot accept the suggestion that the likelihood is that it was part of that application because this is speculation and, importantly, the plan which is clearly referenced on the 1988 permission differs.
18. It was also indicated that the words "as modified by plan reference 87195.03 Rev B received 8 January 1988" indicate there was another plan that has been modified. However, the natural and ordinary meaning of the words is clear. The Local Planning Authority granted planning permission for the development described, in accordance with the details given in the application ref 2/87/789(67), as modified by the plan which was received later. The plan modified the application made pursuant to the 1988 permission, not a previous and unspecified permission which should be incorporated by virtue of the wording.
19. The 1988 permission was subject to eight conditions. Condition 6 states that "Before building works commence detailed plans of the washroom/laundry building and the refuse bin enclosure shall be submitted to and approved by the Local Planning Authority prior to this access coming into use." Condition 7 states "Details of the construction and materials to be used for the laying out of the access road and hardstanding shall be submitted to and approved by the Local Planning Authority prior to this access coming into use". The Council argued the conditions 6 and 7 require reference to plan ref 3/G237, due to the words "the" within each condition.
20. While it may have been the intention of the person who drafted the conditions that they should be read alongside plan 3/G237, this is by no means clear. The plan is not specified, and the condition does not require works to be carried out in accordance with an existing plan but for details to be submitted. Contrary to the Council's assertions, it would not be necessary to search for a plan showing the washroom/laundry building, the bin enclosure nor the hardstanding. The conditions could be discharged without reference back to the earlier plan.
21. I do not consider that the 1988 permission creates ambiguity. However, even if I were to accept that the 1982 permission, and also plan 3/G237, should be looked at, it would not resolve any ambiguity. This is because the access arrangement proposed on plan reference 87195.03 Rev B is different to the access shown in 3/G237. It was put to me that the later plan superseded the previous in terms of the access but, if this were the case, the other elements such as washing/laundry building may also be superseded. Crucially, plan ref 3/G237 cannot be incorporated without creating ambiguity.
22. On the basis of all I have seen and heard, I conclude on this issue that the 1988 permission does not incorporate the lapsed 1982 permission plan ref 3/G237.
23. This finding is contrary to that of the 2004 appeal Inspector. The Inspector relied, in particular, on conditions 6 and 7 of the 1988 permission which he considered would make no sense if the plan 3/G237 were not incorporated. I

disagree on that matter for the reasons explained above. In addition, I have not seen the extrinsic material to which the Inspector referred. Moreover, the 2004 appeal was determined prior to leading authorities on the interpretation of a planning permission, *Barnett, Trump International* and *Hillside Parks*. I am satisfied that a different conclusion is justifiable and correct, having regard to the submitted factual evidence, and the history and planning status of the site.

24. Both the Council and the Appellant were represented by Counsel, and it was agreed that the 1988 permission should be interpreted as relating both to the operational development proposed and to the use described. This accords with the findings of the 2004 appeal Inspector on this particular matter. It was further agreed that in construing the use of the land as a caravan site, the statutory definition should be relied upon⁸. It is common ground that the 1988 permission was implemented, and the proposed development is not prohibited by any condition attached to the 1988 permission. Therefore, the development sought, the use of the land for the siting of caravans for human habitation, would fall within the scope of the 1988 permission.
25. The Council accepted that, if the plan ref 3/G237 was found not to be part of the 1988 permission, then its arguments in relation to physical incompatibility with a subsequent permission did not fall to be considered. Furthermore, it is not necessary to consider whether the proposal would constitute a material change of use for which planning permission would be required, provided the caravans sited fall within the statutory definition⁹.

Conclusion

26. For the reasons given above I conclude, on the evidence now available, that the appellant's evidence is sufficiently precise and unambiguous to show the proposed use would be lawful if it were instituted on the date of the application.
27. Consequently, I find that the Council's refusal to grant an LDC in respect of the proposed use of land for the siting of caravans for the purposes of human habitation was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Moore

Inspector

⁸ The term 'caravan site' is defined in s1(4) of the Caravan Sites and Control of Development Act 1960 (CSCDA) as meaning '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'.

⁹ A "caravan" has the meaning contained in the CSCDA s 29(1) as extended by the Caravan Sites Act 1968.

APPEARANCES

FOR THE APPELLANT:

Mr Ben Eiser

Eiser Planning and Development
Consultancy Services Ltd

Mr Michael Rudd of Counsel instructed by Mr Ben Eiser on behalf of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Brendan Brett of Counsel instructed by Dorset Council

Mrs Jennie Roberts

Senior Planner at Dorset Council

DOCUMENTS SUBMITTED AT THE HEARING

Letter of notification of the Hearing and list of addressees

Transcript of *Barnett v SSCLG* [2009] EWCA Civ 476

Extracts from Town and Country Planning Act 1990 s75 and s336 definitions



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 October 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant's evidence is sufficiently precise and unambiguous to show the proposed use would fall within the scope of planning permission reference 2/87/789(67), dated 2 February 1988. Consequently, it would be lawful if it were instituted on the date of the application.

Signed

D Moore
Inspector

Date

Reference: APP/D1265/X/23/3324824

First Schedule

Proposed use of land for the siting of caravans for the purposes of human habitation

Second Schedule

Land at Stour Hill Caravan Park, West Stour SP8 5SE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated:

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land at: Stour Hill Caravan Park, West Stour SP8 5SE

Reference: APP/D1265/X/23/3324824

Scale: NTS

