



Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/P1133/X/22/3308019

Ross Park Caravan Park, Moor Road, Ipplepen, Newton Abbot TQ12 5TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended 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 Ross Park Homes Ltd against Teignbridge District Council.
 - The application ref 22/00808/CLDP is dated 19 April 2022.
 - 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 land for the siting of touring caravans, the touring caravans may remain sited throughout the year and be occupied for human habitation of any type including as a person's sole or main place of residence."
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application is for a Certificate of Lawful Use or Development (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.
3. The Council has advised that had it been in a position to determine the application within the prescribed period, it would not have granted a LDC for the proposed use of the land in the terms requested.
4. In light of the matters at issue, it was not necessary to conduct a site visit.
5. An appeal against the Council's refusal of a LDC concerning a different area of the caravan park was determined on 6 October 2023.¹ I gave both parties the opportunity to comment on any implications that decision may have for their respective cases in the current appeal. I also invited their comments on the Court of Appeal's judgment in *Barton Park Estates Ltd* ², which post-dated the LDC application in the current appeal.
6. The Appellant made an application for a full award of costs against the Council. That application is the subject of a separate Decision Letter of even date.

¹ Ref APP/P1133/X/23/3320991

² *Barton Park Estates Ltd v SSHCLG & Dartmoor NPA* [2002] EWCA Civ 833

Main issue

7. Ross Park is an established caravan park, for which planning permission was granted in 1991 ("the 1991 Permission").³ The Appeal Site is the central area of the caravan park, and is part of the same overall Planning Unit. It is common ground that the Appeal Site has planning permission for use by touring caravans; that there is no longer any condition governing the number of caravans permitted; and that as a consequence of the LDC granted in 2022⁴, there is no longer any restriction on touring caravans remaining on the Appeal Site outside the period from April to September. The dispute between the parties relates to the manner in which such caravans may be occupied.
8. The main issue for this appeal, then, is whether or not the proposed use of touring caravans for any type of occupation, including as a person's sole or main place of residence, falls within the existing lawful use of the Appeal Site. If it does, the LDC should be granted.

Analysis

9. The Appellant rightly points out that the statutory definitions of "caravan" and "caravan site" do not differentiate between different types of caravans, or the many ways in which they may be used and occupied. But the 1991 Permission was not simply for "a caravan site": the development it permitted was "use of the land as a site for *touring* caravans" [my emphasis]. Further, the 1991 Permission was – and remains – subject to a condition restricting the use of the site to "touring caravans and camping and no other use."
10. The Courts have established that a planning permission must be interpreted as a whole, consisting not only of the grant but also the conditions imposed, and the reasons for their imposition. The use of the term "touring caravans" in the description of the development for which permission was granted is important and relevant, in that it helps to define the character of the use permitted. The ordinary meaning of "touring" is travelling from place to place, usually for pleasure. A reasonable reader would, in my view, understand a "touring caravan" to be a caravan designed to be readily moveable from site to site, providing its occupiers with temporary accommodation in the location of their choice. The descriptive term "touring" relates not only to the design and appearance of the caravan, but also to the manner in which it is used.
11. The Appellant points out that the 1991 Permission contained no references to "seasonal" or "holiday" use. However, in addition to a condition restricting the use of the site to touring caravans and camping only, permission was granted subject to a condition that "The site shall be used only between Easter and 30 September in each calendar year." The terms of that condition would effectively prevent the use of the land as a caravan site outside the main holiday season.
12. Taking all of this into account, I consider that the 1991 Permission was for the use of the Appeal Site by transient seasonal visitors, occupying their caravans (or camping in tents) for leisure purposes. It was not a grant of permission that encompassed any occupation of caravans on the site as sole or main places of residence.

³ Ref 91/1031/15/4 dated 9 September 1991

⁴ Ref APP/P1133/X/21/3288187

13. Since the grant of Permission was made in 1991 there have been a number of changes to the original conditions. There are no longer any conditions placing seasonal restrictions on the presence of caravans on the Appeal Site, or capping their number. Further, the effect of the LDC granted in 2022 is that the Council could not now take enforcement action against touring caravans remaining on the Appeal Site all year round. The Appellant's case is that in the absence of any condition governing how those caravans may be occupied, they could lawfully be used for any type of human habitation.
14. In support of this contention, the Appellant has drawn my attention to the High Court's judgment in *Cotswold Grange*,⁵ where it was held that generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition. That proposition is of course sound, but a more recent relevant judgment was handed down by the Appeal Court in *Barton Park Estates Ltd*. Lindblom LJ held that the absence of a condition specifically restricting (in that case) the number of residential 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. The permission is for the development described in the brief particulars, restricted by the conditions... it is not for some other proposal, formulated in different terms from the grant."
15. The *Barton Park Estates Ltd* judgment also refers to the Appeal Court's earlier judgment in *Winchester*, where Sullivan LJ 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. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission.*
16. In this case, by operation of the 2022 LDC, conditions which restricted the amount of time for (and periods during) which touring caravans may remain on the site no longer apply. But it does not necessarily follow that there is no planning control over how they may be occupied: the terms of the 1991 Permission cannot simply be disregarded.
17. The Inspector's decision on the 2022 LDC refers to a Statutory Declaration given in evidence for the Appellant.⁶ It explained that every winter, some of the caravans of customers who rented seasonal pitches were left on their pitches for the duration of the winter: there was no point in moving them into caravan storage areas at the caravan park as there was insufficient demand during the winter months for the caravan pitches.
18. In considering the interpretation of the relevant conditions, the Inspector held that "remain" cannot be interpreted to mean "occupied". I agree with that finding. An unoccupied touring caravan, left on a seasonal pitch that would otherwise be unused over winter, is not at all the same thing as a caravan that is being lived in year-round as a sole or main residence. In my view, the fact that some unoccupied touring caravans were left on their pitches (instead of being moved to the site's dedicated caravan storage area) out of season would

⁵ *Cotswold Grange Country Park v SoS CLG* [2014] EWHC 1138 (Admin)

⁶ APP/P1133/X/21/3288187 paragraphs 24-25

not, in and of itself, necessarily mean that the appeal site could no longer be characterised as “a site for touring caravans”. But be that as it may, the important point here is that the 2022 LDC does not certify the lawfulness of year-round *occupation* of touring caravans on the appeal site.

19. In my judgment, then, the existing lawful use of the appeal site is as a site for touring caravans, where transient visitors occupy their caravans (or camp in tents) for leisure purposes. The development proposed by the current LDC application would be a change from that use, in that it would encompass the year-round residential occupation of caravans as places of sole or main residence.
20. As to whether such a change would as a matter of fact and degree amount to a material change of use, the Council contends that it would. The Appellant has not addressed this point, since it maintains that there would be no change to the type of permitted use. The Appellant is right that the proposed occupation of touring caravans for human habitation of any sort would not be of a different *type* to the existing lawful use, in that the Appeal Site (and the Planning Unit as a whole) would remain a caravan site. However, what is at issue is whether there would be a change in the *character* of the existing use. The *Barton Park Estates Ltd* judgment confirms that a proposed use can be of the same “type” as an existing lawful use, but still be a material change of use.
21. The proposed use has to be compared with the present use, rather than any notional use which may theoretically be possible without the need for a further grant of planning permission. There is no evidence that any touring caravans on the Appeal Site are occupied as sole or main places of residence: rather, as discussed at paragraphs 17-18 above, the available evidence indicates that they are occupied seasonally. The Council contends, and the Appellant does not dispute, that there would be a materially different level and pattern of traffic movements to and from the site if the touring caravans were to be occupied for permanent residential use. It is likely there would also be changes to the character and appearance of the Appeal Site, for example the introduction of permanent features such as fences and hedges to demarcate plots, and ancillary domestic structures such as garden sheds, patios and decking.
22. There is therefore a strong possibility that occupation of the touring caravans as sole or main places of residence – a type of “human habitation” encompassed by the LDC application – would result in a material change of use. That being the case, I cannot be satisfied that on the balance of probabilities, the proposed use would fall within the existing lawful use of the Appeal Site. The LDC cannot therefore be issued.

Conclusion

23. For the reasons given above I conclude that the appeal should fail, and a certificate of lawful use or development for “the use of the land for the siting of touring caravans, the touring caravans may remain sited throughout the year and be occupied for human habitation of any type including as a person’s sole or main place of residence” should not be granted. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Jessica Graham

INSPECTOR