



Appeal Decision

Hearing Held on 13 February 2024

Site visit made on 13 February 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Appeal Ref: APP/R0660/X/23/3321473

Lea Homes Residential Caravan Park, Nantwich Road, Wrenbury CW5 8ED

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 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 Mr Robert Lee against Cheshire East Council.
 - The application Ref 22/3808N is dated 26 September 2022.
 - The application was made under section 191(1)(c) 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 stationing of residential caravans for non-gypsy persons in excess of 10 years in breach of Condition 2 of planning permission 4/5/8521."
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Decision

1. The appeal is dismissed.

Planning Background and Case Law

2. It appears that planning permission was originally granted for a residential caravan site at the appeal site, for occupation by Gypsies, in the early 1970s¹. In 1972 there was a further planning permission for "Layout of Gypsy Caravan site for 15 Caravans...." This permission was subject to a planning condition² restricting occupation of the site to use by gypsies as defined in the Caravan Sites Act 1968. Despite poor legibility of the document, the parties agreed at the Hearing that the wording of the condition was as follows: "*That the site shall be used only as a site for caravans for gypsies as defined in Section 16 of the Caravan Sites Act 1968*". There is no dispute that the condition restricts occupation of the site to Gypsies and Travellers.
3. In 2002 planning permission was granted for the erection of a detached bungalow on the site. That permission was subject to a condition which limited the occupation of the bungalow to a person employed as a site warden in connection with the operation of the gypsy caravan site³.
4. The appeal site is broadly rectangular and relatively extensive, contained by perimeter fencing. It comprises a largely open area of hardstanding, formed by tarmac and gravel. There are a number of structures present, including

¹ Ref 4/5/8451, although little further detail was made available.

² Condition no. 2.

³ Including any resident dependants of such a person.

static and touring caravans, and three amenity blocks. The evidence indicates that the caravan site is used as a permanent home for four persons, and in addition the site warden is accommodated in the aforementioned bungalow, situated in the south-eastern corner of the site. There is a single point of vehicular access to the site, also in the south-eastern corner.

5. Under s191(1)(c) of the Act an LDC may be sought in respect of a 'matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted'. The failure to comply with a planning condition would become lawful if no enforcement action may be taken in respect of it because the planning condition in question had been breached for a continuous period of 10 years, without any material interruption to that breach.
6. The appellant's case is that the various site occupiers do not have Gypsy and Traveller status and have been in breach of condition no.2 of the planning permission for at least 10 years prior to the LDC application date; in other words since at least 26 September 2012. Condition 2, they say, can therefore no longer be enforced.
7. The onus rests with the appellant to provide evidence to demonstrate that the breach of condition has been continuous. The standard of proof is the balance of probability.
8. There is a question as to whether a single case of the condition being breached continuously would be sufficient to mean the whole site is being used in breach of the condition. To help answer this question it is necessary to consider, having regard to relevant case law⁴, whether it would be possible to spatially identify any parts of the site where the breach has occurred, and can be said to be contained, because the relevant plots are well defined and accommodate units that are identifiable on the ground.
9. For the avoidance of doubt, this principle does not apply to the question of occupation of the bungalow, which is controlled by a separate planning permission and conditions. In other words any use of the bungalow by persons who are not Gypsies and Travellers would not in itself count towards a breach of the subject condition.
10. The aforementioned planning permission referred in the description of development to a layout comprising 15 caravans. Whilst it appears an illustrative layout plan accompanied the planning permission, a planning condition requiring the actual site layout to adhere to that plan was not imposed. Thus, in accordance with case law⁵, and contrary to the Council's representations, I find that the permission, in itself, failed to restrict the layout and number of caravans on the site. I do not therefore give weight to this illustrative plan in terms of any assistance it may provide regarding plot definition.

⁴ *R (oao St Anselm Development Co Ltd) v FSS & Westminster CC* [2003] EWHC 1592 (Admin) and *Royale Parks Ltd v SSHCLG* [2021] EWCA Civ 1101. In those cases it had been possible to isolate specific parts of the site where a breach of condition had occurred and thus reach the conclusion that lawfulness of breach was limited to those specific areas, rather than across the site as a whole.

⁵ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 and *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC* [2014] JPL 981.

11. In broad terms the site surface comprises a loosely gravelled peripheral area, where caravans tend to be located, and central tarmacked areas where vehicles turn. It was apparent from my visit that, in general, the site lacked strong internal boundary features, and therefore was not split up into immediately distinct plots. The appellant confirmed at the Hearing that the identification of particular residents with 'plot' numbers was somewhat arbitrary. Notwithstanding this I consider below the extent to which those plots, in relation to which the occupiers have been ascribed numbers 2,6,7 and 15⁶ can be regarded as well defined, and the units clearly identifiable. A further unnumbered plot situated between plots 2 and 6 is now occupied by the previous occupier of plot 15. For ease of reference I shall refer to this plot as 'plot 4' and shall make the same assessment.
12. Plot 2 is situated in the far north-west corner of the site and consists of a static caravan with white external cladding. It is closely bounded by the perimeter fencing along the northern and western site boundaries. The edge of the vehicle turning area also helps to further delineate the plot.
13. Plots 4 and 6, on the western side of the site, accommodate touring caravans. Both appear to be sited on purposely constructed concrete pads, and are bounded to the front by the vehicle turning area and to the rear by the western boundary fence of the appeal site and adjacent embankment.
14. Plot 7 comprises a mobile home situated within an oval shaped lawned area in the central part of the site. Therefore, notwithstanding the presence of an adjacent concrete pad, which could potentially be utilised by a separate caravan, the boundary of the grass in relation to tarmac and gravel on the site does allow for the significant delineation of the plot. There is a lack of evidence that this green space has a practical communal use.
15. Plot 15, situated towards the south-eastern corner of the site, is contained by the site perimeter fencing to the rear, the site access road and turning area and one of the amenity blocks. There is a concrete pad on which a touring caravan is present.
16. In addition, each of the notional plots appeared to have its own adjacent electricity hook-up point available. It would appear from the evidence, even though capable of being moved, the units present on plots 2, 6 and 7 have remained in the same position for lengthy periods of time. Having regard to aerial imagery, the units currently on plots 4 and 15 have been present for shorter periods.
17. However, for the aforementioned reasons, and as a matter of fact and degree, I consider the various partially delineated plots in question to be sufficiently well defined, capable of further definition, and with clearly identifiable units on the ground present. Therefore, in accordance with the aforementioned case law, I consider that if the breach of condition can be demonstrated to be lawful at all, then this would be in relation to one or more of the respective individual plots in question, where the breach has occurred, and not in relation to the appeal site as a whole.

⁶ As referred to by the occupiers in their respective supporting statements and identified by the appellant at the Hearing on an aerial photograph dated July 2021.

18. I have considered the appeal decision referred to me by the appellant⁷. In the circumstances of that case the Inspector decided that the use of one caravan in breach of the condition would mean the site as a whole being used in breach of the condition⁸. However, given the findings in the more recent case law in *Royale Parks Ltd*, cited above, and my own findings in this case I give greater weight to that court judgment.
19. The site is in a single ownership and the low level of physical or functional separation within it leads me to conclude that the appeal site comprises a single planning unit. There are communal facilities on the site, including the amenity blocks and vehicular access road. However, the nature of the planning unit and use of communal areas does not mean the whole site ceases to be controlled and thus does not alter my conclusion above.

Reasons

20. The primary evidence submitted in support of the appellant's case are various statements, some of which are sworn, from the site occupiers, produced in August and September 2022, shortly prior to the LDC application. The appellant, himself, has provided an affidavit stating he has lived on the site since the early 1980s, and in the bungalow following its construction in the early 2000's; has never had a nomadic lifestyle and has not let Gypsies and Travellers onto the site in the last 10 years. The document has been witness signed by a legal professional and I am satisfied that it constitutes sworn evidence. At the Hearing the appellant said that he worked as a gas engineer primarily in the local area. He pointed out his commercial vehicle, during the site visit, which had signage on it reflecting the same.
21. The Council do not dispute that the appellant is the site warden. Drawing the above considerations together, including the existence of the 2002 planning permission, which referred to Mr Lee by name in one of the planning conditions, I am persuaded on the balance of probability that he has lived on the site as somebody without Gypsy and Traveller status, continuously for at least a 10-year period.
22. However, as set out above, the appellant has occupied the bungalow, which relates to a different planning permission to that which the condition subject to the present appeal relates. Whilst it might be possible to demarcate the bungalow plot by adhering to physical boundaries on the site, restricting an LDC in such terms does not take the appellant's case further forward or meet the terms in which they seek a certificate.
23. Sworn statements are provided by the occupiers of so-called plots 7 and 15, who purport to have been resident at the site in mobile homes since around 2010 and 2006 respectively. Both claim to have paid Council tax and to have lived at the site continuously for in excess of 10 years, not to be Gypsies or Travellers or to live a nomadic lifestyle and not to be aware of the site being used by Gypsies and Travellers. However, the evidence provided is both brief and vague, lacking supporting documents, such as tenancy agreements, rent receipts, utility bills or bank statements that might assist with corroborating the accounts of continuous breach.

⁷ Appeal ref: APP/A0665/X/09/2109738

⁸ The condition in that case controlled the period of occupancy.

24. From evidence provided at the Hearing, it appears that the occupier of plot 15 has since relocated to reside in the touring caravan on 'plot 4'. In any event there is a dearth of evidence to indicate a continuous breach of the subject condition in relation to 'plot 4' at the time of the LDC application.
25. Signed statements have been provided by the occupiers of so-called plots 2 and 6. Both claim to have occupied the site for in excess of 10 years and otherwise make the same statements as the aforementioned occupiers, again lacking supporting documents. Furthermore the statements in this case are not sworn and I therefore attach limited weight to them, given that there can be no sanction such as a fine or jail term if found to be untruthful.
26. In addition, whilst some information was given by the appellant at the Hearing regarding how the other occupiers present at the appeal site make a living, I have very little detail as to the nature of their past and present employment and work patterns. As a result this is insufficient to support the claimed status of not being Gypsies and Travellers⁹.
27. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."* I acknowledge that the Council has provided evidence, disputed by the appellant, which suggests that persons with Gypsy and Traveller status were resident on the site in the ten-year period leading up to the LDC application. However, even if this was the case, it appears that the persons in question occupied different plots to those that the appellant's evidence relates to.
28. Notwithstanding this, I consider, on the balance of probability, the appellant's case lacks sufficient evidence to pass the ambiguity test to demonstrate continuous use of any of the plots (on which the appellant's case has focused) over the requisite timescale by persons who are not Gypsies and Travellers. There is also insufficient evidence of continuous use of any of the other plots on the appeal site by persons who are not Gypsies and Travellers. Therefore, contrary to the appellant's claim, continuous breach of the said condition has, on the balance of probability, not been demonstrated either in relation to specific plots or, having regard to case law, in relation to the site as a whole.
29. However, there is a further complication that will also need to be considered. The appellant reported at the Hearing, and site visit, that the north-eastern corner of the appeal site, has been utilised for caravan storage purposes since the latter part of 2019. The caravans being stored there apparently belong to persons living away from the site, and do not relate to residential occupation on the appeal site.
30. It seems to me that this may have resulted in a material change of use of the appeal site to a mixed use as a caravan site for residential occupation and for caravan storage purposes. Such a material change of use, if it has occurred, may have opened a new chapter in the planning history of the site, serving to interrupt the application of the planning condition associated with the 1972

⁹ Having regard to the amended definition of "gypsies and travellers" in the DCLG Planning Policy for traveller sites August 2015.

permission and thus any potential continuing breach of that condition. This is therefore a further factor that may need to be considered in any future application. However, the question of such a material change of use and whether this is lawful is outside my remit in relation to the current appeal.

31. Therefore, 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 stationing of residential caravans for non-gypsy persons in excess of 10 years in breach of Condition 2 of planning permission 4/5/8521" 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.

R. Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alex Bruce	Planning Consultant
Ian Kilby	Planning Consultant
Robert Lee	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Gemma Horton	Senior Planning Officer
Peter Jones	Lawyer
Dawn Taylor	Cheshire and Warrington Traveller Team Manager
James Thomas	Planning Solicitor

Documents submitted at Hearing:

1. Case Law – *Royale Parks Ltd v SSHCLG [2021] EWCA Civ 1101*;
2. Appeal Decision Ref - APP/E1210/X/19/3227173