



Appeal Decisions

Site visit made on 4 March 2024

Inquiry held on 5-6 March 2024

by John Braithwaite BSc(Arch) BA(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2024

Appeal A Ref: APP/Y3940/X/23/3332453

Stonehenge Touring Park, Whatcombe Brow, Orcheston SP3 4SH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against the grant of a certificate of lawful use or development (LDC).
 - The appeal is made by Countryside Park Homes Ltd against the decision of Wiltshire Council.
 - The application ref PL/2023/00740, dated 31 January 2023, was granted by notice dated 6 October 2023.
 - The application was made under section 191(1)(c) of the Act.
 - The LDC granted was not for what was sought in the application. The application sought an LDC for the 'failure to comply with condition 3 of planning permission ref S/88/1267/TP is lawful'.
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Appeal B Ref: APP/Y3940/X/23/3332851

Stonehenge Touring Park, Whatcombe Brow, Orcheston SP3 4SH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against the grant of a certificate of lawful use or development (LDC).
 - The appeal is made by Countryside Park Homes Ltd against the decision of Wiltshire Council.
 - The application ref PL/2023/00745, dated 31 January 2023, was granted by notice dated 13 October 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The LDC granted was not for the use sought in the application. The application sought an LDC for 'use of land as part of caravan site'.
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Decisions

Appeal A Ref: APP/Y3940/X/23/3332453

1. The appeal is allowed and attached to this decision is an LDC describing the failure to comply with a condition which is found to be lawful.

Appeal B Ref: APP/Y3940/X/23/3332851

2. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

3. An application for costs has been made by Countryside Park Homes Limited against Wiltshire Council. This application is the subject of a separate decision.

Reasons

Appeal A

4. The LDC granted pursuant to the Appeal A application is for 'use of land as a touring caravan site for holiday purposes and parking of unoccupied touring caravans during the months of November to February'. It is clear, not least because the description starts with 'use of land', that the Council determined the application as if it had been made under Section 191(1)(a) of the Act.
5. Planning permission S/1988/1267/TP (PP1267) was granted in August 1988 for 'extend caravan site to 30 pitches and siting of mobile home for warden' for land at Stonehenge Touring Park. This land is the Appeal A land. Condition 3 of PP1267 states that 'The permission hereby granted shall permit the stationing of touring caravans and the warden's mobile home only during the period of 1st March to 31st October in any year. At all other times no caravans/mobile homes shall be parked on the land'.
6. The Council accepts, as set out in the Statement of Common Ground (SoCG), that "Touring caravans have been stationed on the appeal site from the 1st November to the end of February the following year for every year for over ten years prior to the date of submission of the application". They therefore accept that the second sentence of condition 3 has been breached and that the parking of caravans on the land during winter months is immune from enforcement action.
7. PP1267 is, for the purposes of this appeal, for a 'caravan site'; the mobile home for a warden can be set aside because a separate planning permission for 'retention of resident warden's mobile home on a permanent basis' was granted in March 1992. 'Caravan site' is defined in the Caravan Sites and Control of Development Act 1960 (the CSCDA) as "...land on which a caravan is stationed for the purposes of human habitation...". A 'caravan' is defined in the CSCDA, as amended by the Caravan Sites Act 1968, as "...any structure designed or adapted for human habitation which is capable of being moved from one place to another...". The definition includes touring caravans and mobile homes.
8. So PP1267 permits the stationing of caravans, both touring caravans and mobile homes, on the land for the purposes of human habitation. It is the interpretation of the first sentence of condition 3 that is disputed by the main parties. The Council claims that the first sentence of condition 3 limits PP1267 to be for the stationing of touring caravans only, during the period of 1st March to 31st October in any year, whereas the Appellant claims that the sentence limits the stationing of touring caravans on the land to be only between those dates.
9. In essence, the Council claims that 'only' relates to what comes before, and the Appellant claims that 'only' relates to what comes after. In *Hillside Parks Ltd v Snowdonia NPA [2022] UKSC 30* it was held that "...planning permissions are to be interpreted according to the same general principles that apply in English law to the interpretation of any other document that has legal effect. The exercise is an objective one, concerned not with what the maker of the document subjectively intended or wanted to convey but with what a reasonable reader would understand the words used, considered in their particular context, to mean...".
10. For the Council's position to be correct a reasonable reader of the sentence must pause after 'only' because only with such a pause can 'only' relate to what has been read before. But there is no punctuation to create such a pause. The

'only' can only relate to what is written before or after, it cannot relate to both what is written before and after. As a matter of planning judgement, a reasonable reader of the first sentence of condition 3 would not pause, because there is no reason to do so, and would understand that the sentence limits the stationing of touring caravans to be only during the period 1st March to 31st October in any year.

11. The Council has referred to *Royal London Mutual Insurance Society Ltd v SOSCLG [2013] EWHC 3597 (Admin)* but the disputed condition in that case was not related to caravans and the interpretation of the condition by Paterson J was specific to the circumstances of that case. They have also referred to an appeal decision for the use of land at Calamankey Farm and the disputed condition in that case did relate to the use of caravans. But the 'only' in the condition was followed by 'and', which had the effect of separating the two elements of the sentence. In that case the 'only' in the sentence did relate to what preceded it. In this case, as a matter of judgement, the 'only' does not.

Conclusion

12. There is nothing in the first sentence of condition 3 that limits the stationing of mobile homes on the land, and with regard to touring caravans the first sentence of condition 3 does no more than the second sentence. The accepted breach of the second sentence must therefore also apply to the first sentence of the condition. For the reasons given the Council's refusal to grant an LDC for 'failure to comply with condition 3 of planning permission ref S/88/1267/TP is lawful' at Stonehenge Touring Park, Whatcombe Brow, Orcheston was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

13. Section 191(1)(c) of the Act relates to 'any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful'. The description of the existing activity for which an LDC was sought, on the application form, followed the wording of Section 191(1)(c). But as a description of what is lawful it is clumsy and imprecise. The LDC is therefore for 'use of land as a caravan site without compliance with condition 3 of planning permission S/1988/1267/TP is lawful'

Appeal B

14. The LDC granted pursuant to the Appeal B application is for 'use of land as part of a holiday touring park for the purposes of recreational use by guests of the holiday park throughout the year and seasonal grass pitches for tents, campervans and touring caravans during the months of April to September each year'.

15. The land that is the subject of Appeal B adjoins the land that is the subject of Appeal A. There is nothing on the ground that demarcates the two areas. It is stated in the SoCG, under the heading 'Appeal B: Areas of Agreement', that "The appeal site forming the subject of Appeal B is an extension of the appeal site of Appeal A", "There is no requirement for touring caravans to be on site all year round to establish whether a material change of (use of) land has been made", and that "The material change of use took place prior to 31st January 2013" (i.e. more than ten years before the date of the application).

16. The application sought an LDC for 'use of land as part of caravan site'. It has been found in Appeal A that the land to which that appeal relates is a caravan site. It is agreed by the Council that the Appeal B land is an extension, and

therefore a part, of the caravan site. Given also the extent of agreement on other matters it must be concluded that the use of the Appeal B land as part of a caravan site is lawful.

Conclusion

17. For the reasons given the Council's refusal to grant an LDC for 'use of land as part of caravan site' at Stonehenge Touring Park, Whatcombe Brow, Orcheston was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly and the LDC granted accurately describes the use that is lawful.

Other matters

18. Local residents have referred to, amongst other things, the name of the caravan park, Stonehenge Touring Park, to the lawful siting of six mobile homes on adjoining land, to flooding of the Appeal B site during winter months and sewerage problems in the area, and to the fact that part of the site is within the River Till SSSI and the River Avon SAC. None of these are factors that can influence, in Appeal A, the interpretation of condition 3 of PP1267, and, in Appeal B, a judgement on whether the land is lawfully part of a caravan site.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Rudd Barrister instructed by Green Planning Studio Ltd

He called

Mr M Green BA Partner of Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Robson Barrister instructed by Ms A Pearce, Solicitor to Wiltshire Council

He called

Ms J Mitchell MA Senior Planning Officer

INTERESTED PARTIES:

Mr S Shepherd Chairman of Orcheston Parish Council

Mr M Lockwood Resident of Orcheston

DOCUMENTS

- 1 Opening submissions on behalf of the Local Planning Authority
- 2 Opening submissions on behalf of the Appellant
- 3 Statement of Common Ground
- 4 Statement by Mr Shepherd
- 5 Statement by Mr Lockwood
- 6 Closing submissions on behalf of the Local Planning Authority
- 7 Closing submissions on behalf of the Appellant
- 8 Cost applications on behalf of the Appellant and final comments
- 9 Response to Appellant's costs application

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 January 2023 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Condition 3 of PP1267 has been wholly breached, continuously, for in excess of ten years prior to the date of the application. The condition has ceased to have any effect and does not therefore impose any limitation on the planning permission.

Signed

John Braithwaite

Inspector

Date: 02 April 2024

Reference: APP/Y3940/X/23/3332453

First Schedule

Use of land as a caravan site without compliance with condition 3 of planning permission S/1988/1267/TP is lawful.

Second Schedule

Land at Stonehenge Touring Park, Whatcombe Brow, Orcheston SP3 4SH

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the breach of condition described in the First Schedule taking place on the land specified in the Second Schedule was 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 breach of condition described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any breach of condition 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.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 January 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The land has been used as an extension to a lawful caravan park for in excess of ten years and this use of the land is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 02 April 2024

Reference: APP/Y3940/X/23/3332851

First Schedule

Use of land as part of caravan site

Second Schedule

Land at Stonehenge Touring Park, Whatcombe Brow, Orcheston SP3 4SH

NOTES

This certificate is issued solely for the purpose of Section 191 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 was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

