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## Appeal Decision

Inquiry held on 12 and 13 March 2024

Site visit made on 12 March 2024

**by Timothy C King BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 May 2024**

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**Appeal Ref: APP/X1118/X/23/3331786**

**Bay View Farmers, Turnpike Cross, Woolacombe, Devon EX34 7HG**

- 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 refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Simon Burley against the decision of North Devon District Council.
  - The application Ref 76269, dated 18 November 2022, was refused by notice dated 23 May 2023.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described as *'Proposed siting (amended to use of the land for the stationing) of 167 touring caravans, static caravans, camper vans and tents, with the proportion of each unrestricted, for tourist accommodation.'*
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### Decision

1. The appeal is dismissed.

### Preliminary matter

2. At the time the application was made it was accompanied by a series of site layout plans, albeit illustrative. However, during the Inquiry the appellant's witness requested that these be withdrawn as he considered them to be incorrect and thereby misleading. The relevant regulations indicate that LDC applications are not dependent on such indicative plans and therefore I have accepted the request.

### Background

3. The application at appeal relies on a s191 LDC (ref 75716) issued in December 2022 which confirmed the lawful use of the land at that point in time. The certificate was worded:

*'The existing use of land as a camping and caravanning site (by way of tents, touring caravans and camper vans and the stationing of a single static caravan) for tourist accommodation.'*

### Main Issue

4. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

## Reasons

5. In seeking a LDC, be it under s192, as here, or s191, of the 1990 Act (as amended) the onus of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning legislation and case law.
6. In determining an application for a prospective development under s192 I needs to ask whether, if the use as described had occurred, it would have been lawful for planning purposes.
7. In order to support the case the proposal should be described in sufficient detail and with sufficient precision to enable a decision to be correctly made. An LDC issued under s192 should be worded with the same precision on any issued under s191.
8. There is no equivalent power to that set out under s191(4) for the Council or the Secretary of State to modify the terms of an LDC application. This was held in the Court of Appeal on the judgement of *R v Thanet DC and Kent International Airport plc ; ex p Tapp and Britton* [2002] PLCR. It is for the appellant to correctly word and propose the use or operation for which they wish to ascertain lawfulness.
9. The appellant relies primarily on two Court judgements to support his case; *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited* [2012] EWCA Civ 1473 and *Breckland DC v SSHCLG & Plum Tree Country Park* [2020] EWHC 292 (Admin).
10. The Hertfordshire case involved an intensification in the use of a scrap yard and whether this constituted a material change in the use of the land. The Inspector had allowed appeals against enforcement notices issued against the use, finding that there had not been a breach of planning control.
11. The judge indicated that the Inspector had correctly considered what must be determined as to whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use.
12. The underlying principle in the above case is that mere intensification is not sufficient to amount to a material change of use if it falls short of materially changing the definable character of the use of the land. Impact cannot be considered in isolation from what is happening on the land. It is the overall character of the use that must be considered. This principle also came to the fore in the judgement of *Reed v SSCLG & Another* [2014] EWCA Civ 24.
13. The consideration to be borne in mind is whether the on-site and off-site effects are such that there has been a definable change in the character of the use of the land.
14. In the judgement of *Broxbourne BC v SSE* [1979] JPL 308 it was held that an established use certificate (EUC) shall be conclusive for the purposes of an enforcement appeal. The Inspector was entitled to find that there had not been a material change of use because the use being enforced against was not so

different to that described in an earlier EUC. It did not matter that the EUC was 'silent as to the scope and intensity of the use'.

15. Broxbourne was applied in *Breckland DC v SSHCLG & Plum Tree Country Park* [2020] EWHC 292 (Admin), as referred to. Here, the Court held that the interpretative principles applicable to planning permissions can apply to LDCs where general ambiguity is found, although the judge found no ambiguity in the term caravan and camping site, which was the lawful use of the land, as worded in the LDC which the s192 application relied upon.
16. However, in the current appeal a clear distinction can be drawn with the above case law in that the lawful use of the land, although a camping and caravanning site, specifically restricts the number of static caravans to a single unit. This element itself is clear and unambiguous. In contrast the wording of the proposed use, although allowing for the stationing of up to 167 touring caravans, static caravans, camper-vans and tents for tourist accommodation, does not necessarily allow for a mix of these types as the development's description says that the proportion of each would be unrestricted. This would suggest that appellant is looking to substantially increase the number of statics on the land, and this was admitted in evidence given by the appellant's witness at the Inquiry. However, he did say that the stationing of 167 statics would not be physically possible given the site's constraints.
17. Generally, in instances where lawfulness was established at a low baseline, where actual numbers of caravans are specified, it can be the case that an applicant will seek to ratchet up the numbers on the back of the next lowest number that can be shown to be lawful. Here, of course, only one static is permissible. The correct approach to be taken in such cases is as laid down by the Court of Appeal in *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330. It is necessary to compare the proposed use with the actual existing use, and not with some notional use that might be lawful. Accordingly, the wording of the use proposed in the s192 LDC application should be examined and a decision made as to whether the development as described on the application form would represent a material change of use as a matter of fact and degree.
18. The Council cites the Court of Appeal judgement of *Barton Park Estates Ltd v SSCLG and Dartmouth National Park Authority* [2022] EWCA Civ 833. This involved a site which enjoyed a longstanding planning permission for the siting of a mixture of residential units, including chalets along with static and tourer caravans on a leisure park, subject to certain seasonal occupation restrictions. The culminating court of appeal judgement followed an appeal decision where the Inspector upheld the Council's decision to refuse a LDC under s192 for the proposed siting of up to 80 caravans for residential purposes.
19. The Inspector, in dismissing the appeal, had concluded that the earlier planning permission did not provide for such, and it would amount to a material change of use of the land. Although acknowledging that the proposed use would not be of a different type to the existing lawful use, in that the planning unit would remain a caravan site, she reasoned that the intensification of an existing use can amount to a material change of use, and that the issue was whether the extent and nature of the change would amount to a change in the character of the existing use.

20. The judge commented:

*"The appellant says that it would not be a material change, because the site would continue to be a caravan site, or at any rate a caravan site with some chalets in addition, and because intensification of an existing use does not amount to a material change. However, whether there is a material change of use is a fact-sensitive issue which is for the Inspector to determine."*

21. In the current appeal the Council's reason for considering that the development, as proposed would bring about a material change of use, is the assessment that it would bring about a different, more visually intrusive and intensive form of development. It goes on to indicate that there would be the potential for the site to be occupied all year round. However, the existing lawful use of the land does not restrict the use to that of a seasonal nature.
22. The site's ground levels drop down to the west from the entrance off the B3343 and the existing pitches are not readily visible from the road; certainly not those set into the site. It is similarly set back from Turnpike Cross. However, the appeal site's lawful use as a camping and caravanning park is reaffirmed by the signage at the entrance which advertises its essential 'camping' function. At my visit, which was out of season, the site was only sparsely occupied, with touring caravans, but I accept that this will significantly increase during the spring and summer months. This, though, is indicative of the site's current use for camping purposes, where no more than one static caravan is permitted.
23. A discussion took place at the Inquiry as to the definition of a touring caravan; in other words one which can be drawn along the public highway. In my experience the term "touring" must relate to more than just a caravan's physical construction. In drawing a distinction between tourers and statics I consider there is a functional difference with the activity around the former being short term in that awnings and other paraphernalia are temporarily used when people are occupying them whilst on holiday. In contrast, static units can lead to more domestic settings and, unlike touring caravans, are not generally towed away when the holidaymakers go home. Indeed, the term 'static' suggests a high degree of permanence.
24. Further, and with reference to the judgement of *St Anne's Court Dorset Ltd v SSHCLG & Anor* [2021] EWHC 2954, in addition as being transitory, touring caravans tend to be smaller than static units, reflecting the need to tow them, whereas statics need to be brought onto the site by large vehicles, and their lack of mobility and semi-permanent connection to services means they are less easy to move around.
25. At the Inquiry the appellant described the site as being in mixed use although, as far as camping and caravanning sites are concerned, a mixed use site is one which is licenced for both residential and holiday use. In this particular instance, though, it follows that the pitches are currently used almost exclusively for holiday purposes. However, if it was accepted that the existing LDC and its limitations could be relied upon to allow for the scope of development described through the wording on the s192 application form the physical form of the caravans, involving scale and also operation, could significantly change the character of the camping and caravanning possible and permissible under the existing LDC. The appellant says that the proposed use would be for holiday purposes only. This might be the case but I find that, due

to the scope of the proposal described, a more residential feel and character could easily take over at the expense of the site's 'camping' function.

26. In other words, the stationing of a substantial number of statics, which the appellant's witness acknowledged was likely the appellant's intention – hence the wording of the s192 LDC applied for – would quite easily bring about a marked change in definable character due to what could easily amount to a substantial difference in the scale and nature of the use.
27. Directly related to this, although the illustrative site plans were withdrawn at the Inquiry – and, as mentioned, indicative plans are not essential to accompany such a s192 application – I find that the absence of any such layout details here, given the appellant's apparent intention to increase the number of static caravans, means that a standard assessment of the effects and impacts, which could be better assessed through a planning application, cannot be fully gleaned due to the considerable scope of the application, as worded.
28. I find that the proposal's wording is somewhat nebulous and, in amounting to a significant degree of scope and uncertainty, it represents the crux of the case.
29. Whilst I consider that the off-site effects of an increased residential element would not be particularly noticeable in terms of the number of vehicles visiting and leaving the site throughout the holiday season – campers, tourers and statics would all involve trips involving private motor vehicles, there would be a change in the type of vehicles entering and leaving the site at the times when static caravans were being brought to the site. This could be considerable depending on the number of statics placed on the land. As mentioned, those caravans on pitches set down into the appeal site would not be readily visible from the roadside due to the lower ground levels, but I must agree with the Council that a more intensive use of the land, in the manner described, would constitute a marked change in the character of the use of the land.
30. From the evidence adduced I therefore conclude that the proposed use has considerable scope such to be materially different to that possible under the existing LDC and its limitations. What could easily amount to a change to the scale and type of operation would bring about a material change in the definable character of the use with a resultant imbalance in favour of static caravans, made possible due to the proportion of each type of accommodation being unrestricted.
31. As I have concluded that the scope of the existing LDC does not allow for such latitude the proposal, as worded, would require the benefit of planning permission. Accordingly, the Council's decision in the circumstances was well founded.
32. Accordingly, the appeal is dismissed, and I shall exercise my powers under section 195(3) of the 1990 Act, as amended.

*Timothy C King*

INSPECTOR