



Appeal Decision

Accompanied site visit made on 6 March 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Appeal Ref: APP/R3650/X/23/3331396

J Mar, Badshot Farm Lane, Badshot Lea, Farnham, Surrey GU9 9HY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act, as amended) against a refusal to grant a certificate of lawful use or development (the LDC).
 - The appeal is made by Mr Noah Smith against the decision of Waverley Borough Council (the LPA).
 - The application ref WA/2023/01341, dated 14 June 2023, was refused by notice dated 2 October 2023.
 - 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 as a caravan site for the stationing of 8 static caravans and 2 touring caravans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Initially this appeal was scheduled for an Inquiry but following a Case Management Conference (CMC) on 3 January I decided, following input from the main parties and the main third party objector, Ms Healey of Blake Morgan (the three parties), that it could be acceptably dealt with by written representations and by an accompanied site visit. Blake Morgan is acting for an interested third party.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's refusal was well-founded. s55(1) of the Act defines 'development' as the carrying out of building etc operations or the making of any material change of use (MCU) of any buildings or other land. The main issue between the parties and what the appeal turns on is whether the proposed use would involve a MCU of the appeal land. If it would not, the LDC should be granted. If it would, planning permission for the MCU would be required by s57 of the Act and the LDC should consequently be refused, and the appeal dismissed.
4. As is also usual in such appeals, the burden of proof is on the appellant to set out why the proposed use would not be a MCU. The standard of proof required is the civil standard, which is the 'balance of probabilities' in terms of whether the proposal would or would not amount to a MCU.

Background – The Site and Relevant Planning History

5. The appeal site is square-shaped piece of land measuring 0.32 hectares located in an area of 'Countryside beyond the Green Belt' to the south of Badshot Lea and just to the north of the A31 trunk road, of which there are glimpsed views from the site. It is accessed on its southern side off a narrow unsurfaced private lane at the southern end of Badshot Farm Lane, which is itself only partially hard surfaced and is also a public footpath (FP113). Parallel to this lane and running along the northern boundary of the site is a narrow public footpath (FP209), which heads west off FP113 and crosses over the railway line to the west of the site.
6. On 9 December 2010 a LDC under s191 of the Act was granted for '*the use of the land as a residential mobile home park for the siting of a maximum of 4 caravans and 1 touring caravan*'. I agree with the appellant that the lawfulness of that use is therefore conclusively presumed, albeit he argues that this maximum number of caravans has no legal effect and should merely be considered a starting point for considering whether there would be a MCU.
7. During my visit I saw 3 mobile homes, 2 on the eastern side of the site and one on the western side. Adjacent the latter was a touring caravan near the southwest corner of the site, to which was attached a rickety timber structure, possibly incorporating a toilet. There were 2 further touring caravans situated side by side on the southern boundary. The area between all these caravans, in the middle of the site, is comprised of an open grassed area. The area to the north of the mobile homes, comprising approximately a third of the site area, is wooded and contains a few timber sheds, beehives and planted areas.
8. The northern, eastern and western boundaries of the site are screened by trees and hedges. The southern boundary is only partially screened at its southwestern end by an evergreen hedge. The mobile homes sit on pads or breeze blocks. Other than that, there is no hardstanding on the site. Its overall appearance is of a verdant clearing next to a patch of woodland in the open countryside, on which are sited 3 mobile homes, 3 touring caravans and a few small outbuildings or sheds.

Reasons

9. An important issue, as set out in the three parties' written submissions, is the applicability of various caselaw pertaining to MCU to the circumstances of this case.
10. The initial written submissions included the appellant's Statement of Case, the LPA's letter of 20 December 2023 and a copy of its delegated report of 2 October 2023, and Blake Morgan's letter of 21 December 2023, as well as objections from various neighbouring residents and local Councillors. Given the change of procedure from an Inquiry to Written Reps the appellant requested, and I granted at the CMC, the opportunity for his barrister (Richard Harwood KC) to provide legal submissions, which he did on 24 January 2024. The LPA, Blake Morgan and a neighbour commented on these by 6 February 2024. As agreed at the CMC, the appellant's barrister availed himself of the opportunity to address these comments on 9 February 2024.

11. I agree that *Hertfordshire*¹ is a relevant case. But so too are *Childs*² and *Barton Park Estates*³. A change of use in itself is not development, whereas a MCU is. There is no dispute that intensification of a use is capable of constituting a MCU. For it to do so the intensification must result in a material change in the definable character of the use of the land; mere intensification of itself is insufficient. Whether it would do so in any particular case is a matter of judgement for the decision maker, based on the circumstances of the case.
12. When assessing whether a MCU would occur it is permissible to consider potential off-site effects related to the identified change in scale or intensity, in addition to the effects on-site. This is made crystal clear in paragraphs 25 and 26 of the *Hertfordshire* judgement, in particular as follows: '*In assessing whether there is a change of character in the use, its impact of the use on other premises is a relevant factor. It is necessary, on the particular facts, to consider both what is happening on the land and its impact off the land when deciding whether the character of the use has changed.*' Paragraph 26 specifically cites *Elias J* in a previous case⁴: '*Perhaps the key point here is that the impact of a particular use is an integral part of the character of that use, so that even though the relevant use itself may not change, save in the intensification itself, that will, in an appropriate case, be capable of constituting a change in character.*'
13. *Childs* is relevant to the extent that that judgement considered a more or less identical set of circumstances: the doubling of a similar number of caravans on another caravan site. Paragraph 26 of that judgement made clear that when the existing lawful use has been expressed by reference to intensity (i.e., numbers of caravans) – as it was by a s191 LDC there – and the proposed use would be more intensive (a doubling of the numbers of caravans), then that is capable of being a MCU. Subsequent caselaw does not negate that conclusion, which is mere commonsense. Whilst the lawful use of the land here is a caravan site, the existing s191 LDC, by its reference to 4 caravans and 1 touring caravan, sets out a baseline intensity for the use of the caravan site on which to judge whether a higher intensity may (or may not) result in a MCU.
14. The appellant argues that little credence should be given to *Childs* because it has been superseded by subsequent caselaw, *Hertfordshire* in particular. However, I have outlined the most pertinent parts of *Hertfordshire* above. The appellant also says that *Childs* has been superseded because of the fact that the LPA in that case has subsequently gone on to grant a s192 LDC for 9 caravans, more than double the initial (lesser) number of 8 sought at the time of the Court case. Whilst that is factually accurate it does not negate the continued applicability of the above principal finding of *Childs*, because the LPA's decision was made on the facts surrounding the subsequent application in 2023, including the subsequent planning history that led to permission on appeal for 7 caravans in 2022.
15. *Barton Park Estates*, a decision of Sir Keith Lindblom (sitting as Senior President of Tribunals) and two other judges, is relevant in that it postdates

¹ *Hertfordshire County Council v The Secretary of State for Communities and Local Government & Metal and Waste Recycling Limited* [2012] EWCA Civ 1473

² *R (on the application of John Childs) v The First Secretary of State & Test Valley Borough Council* [2005] EWHC 2368 (Admin)

³ *Barton Park Estates Ltd v The Secretary of State for Housing, Communities and Local Government & Dartmoor National Park Authority* [2021] EWCA Civ 833

⁴ *R (on the application of Stephen John Manning) v South Lakeland District Council* [2005] EWHC 242 (Admin)

Hertfordshire and confirmed that reference to the off-site effects of an increase of caravan numbers on a caravan site is permissible when assessing whether there would be a MCU, in particular in regard to traffic movements to the site and impacts on views into the site from an adjoining road. This judgement concerned an appellant's challenge to a dismissed appeal to a s192 application refusal on a caravan site, including on the grounds that no MCU would occur.

16. The appellant also cites *Reed*⁵. This was a judgement concerning an enforcement notice alleging a MCU to the stationing of two static mobile homes, touring caravans for residential use, a storage container and a mobile utility block caravan site – in essence also a doubling of the number of residential caravans. But *Reed* is irrelevant to this case because the Inspector in that case was found to have wrongly concluded that mere intensification (simply by doubling the number of residential caravans) amounted to a MCU, without having properly assessed whether there had been a material change in the definable character of the use of the land. That is not what the LPA is doing here; on the contrary, it argues that there would be a material change in the definable character of the land here, in terms of landscape changes and the visual impact of such, and additional undesirable traffic movements to the site resulting from a material increase in residential units on the site.
17. In terms of MCU, 'material' in this sense means material for planning purposes: the planning consequences and environmental impact of the proposed use, which may well include any possible effect on local amenity and not just the likely effects on the land itself and its occupants. So, whilst this is a LDC appeal and is not assessed on whether it would comply with development plan (DP) policies (as a planning appeal would be), the planning impacts of the proposal may be pertinent in deciding whether it would result in a MCU.
18. So, the question here is: would there, as a matter of likely fact and degree, be a material change in the definable character of the existing use of the land?
19. At present, as described above, the site's overall appearance is of a clearing next to a patch of woodland in the open countryside, on which are sited 3 mobile homes, 3 touring caravans and a few small outbuildings or sheds. There are fleeting kinetic glimpses of the caravans when driving along the A31 but they were barely noticeable from FP209 when I visited the site, even though there were not yet any leaves on the trees within the site's woodland or on the shrubs adjacent to the footpath.
20. No existing or proposed plans of the caravans on the site were submitted as part of the application and I accept that the exact positioning of the proposed caravans, and the location and amount of hardstanding, roads and services would be determined by the site licence. I also accept that, subject to such a site license, such operational development would be permitted development by reference to Schedule 2, Part 5, Class B of the GPDO⁶.
21. However, the provision of 8 static caravans (or mobile homes) would be likely to markedly change the character and appearance of the site; these statics could be twin-units as per s13 of the Caravan Sites Act 1968 as amended and so could be considerably larger than the existing statics on site. It would be likely to involve removing at least some of the trees in the northern woodland

⁵ *Reed v The Secretary of State for Communities and Local Government & Another* [2014] EWCA Civ 241

⁶ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

to ensure sufficient and suitable gaps between caravans, especially if they were twin-units. This would result in a more developed and distinctly less rural feel and appearance to the site. Its character would be less open, verdant and spacious, which would be very noticeable to the current occupiers of the existing caravans. It would also mean that more of the caravans would be visible for more of the year from FP209, diminishing the open rural character of the surrounding land as perceived by users of this footpath.

22. To this extent the proposed change would adversely affect the visual setting of the site and its surroundings, something that I note Policy FNP11 of the 'made' Farnham Neighbourhood Plan endeavours to prevent. Whilst this LDC appeal is not assessed formally against such DP policies, the proposed changes to the use of the site would likely have adverse planning impacts on not only users of the site but those using adjoining land – which signals to me that the proposal would materially change the character of the land's use.
23. Alternatively, even if all the trees on the northern third of the site were to remain, that would mean that the additional static caravans would have to be situated next to the 3 existing statics (and some or possibly all the existing touring caravans) on the site. That would drastically change the character of the green clearing on the southern part of the site currently occupied by the 3 statics and the tourers. Its open verdant rural feel would be transformed into a densely occupied caravan site with more of an urban character in terms of the distance between caravans. It would be likely to require more hard surfacing, not least to accommodate the increased numbers of occupiers' vehicles. There would be far less green open space for current occupiers to partake of relaxation/recreation on the site, including for any children living there. Such a change in the site's character and appearance would clearly be material. It would also give the caravan site an incongruous and more urban appearance from the A31 on a piece of land which is otherwise surrounded by open countryside.
24. It is unclear how many of the existing caravans on site are occupied and for how long. I accept that the s191 LDC is for 4 statics and 1 touring caravan, all of which could in theory be permanently occupied year-round. But the proposal would enable a doubling of families/residential units occupying the site and would therefore double the amount of traffic to the site. That in itself would change the site's low key and quiet character for current occupiers in that there would be more comings and goings of vehicles adjacent to their caravans, which would affect their living environment.
25. It would also mean more traffic accessing the site via Badshot Farm Lane, FP113. I agree with neighbouring residents that this access is poor. It is narrow where it adjoins the B3208 next to Squires Garden Centre, such that vehicles approaching each other have to give way and frequently back up to allow the oncoming vehicle to pass, as they also have to at other points along its length. At its southern end there are two sharp bends where the visibility is poor. The southern half of the Lane is poorly surfaced and potholed.
26. I acknowledge that the Motion Highways Objection submitted by the neighbouring residents on the Lane only suggests an average of 1 vehicle movement per hour for the four additional dwellings on the site (2 in peak hours). But the Lane is a public footpath and is clearly used a lot by local people, including by horses and for walking dogs, as indicated by residents.

Adding the traffic of an additional 4 dwellings would only make the above conflicts with users of the Lane worse.

27. The lane at a right-angle off FP113 at its southern end that gives access to the site is only 2.8m wide and constrained by a wire fence on its northern side and a ditch on its southern side. It was very muddy when I saw it. It struck me that it was very unsuitable, certainly in the winter, as a regular vehicular access to the caravan site.
28. For these reasons the additional traffic generated by the new caravans would change the character of these existing lanes by increasing conflict with other users of the lane, including pedestrians.
29. I have already indicated above how the additional caravans would materially change the character and appearance of the site. In view of this it is acceptable in terms of caselaw precedent to consider the off-site effects of them being transported to the site, even though there would only be 5 additional such caravans from the number currently existing on the site, and 4 more than the acknowledged lawful use. The appellant accepts, in terms of the turnover of individual statics on the site, that there would be a pair of additional static caravan movements every (roughly) 4 years (the old caravan being moved off the site and the new caravan moved onto it), albeit he claims this would be immaterial. There would of course be the transport onto the site of the 5 new statics, there only being 3 on the site currently.
30. Ms McDougall's objections, including photographs of a static caravan being delivered down Badshot Farm Lane, illustrate how unsuitable the Lane is for such deliveries because of its narrowness, particularly in terms of just how near the lorry delivering the static came to various buildings, including listed buildings, along the Lane. The right-angle lane to the site itself is even narrower than Badshot Farm Lane and delivering the new statics to the site would be bound to cause damage to trees and vegetation adjacent this lane. In my opinion, even though 8 static caravans are not a very large number and the swapping of established statics on the site would only take place roughly every 4 years, this would be likely to result in an average of about 4 static caravans (2 old ones removed and 2 new ones moved in) being transported by heavy lorries on average each year down these unsuitable narrow lanes. That would adversely alter the character of these lanes, because they are completely unsuitable for such increased heavy traffic movements.

Conclusion

31. I conclude, for the above reasons, that the proposal to increase the numbers of caravans on the site to 8 statics and 2 tourers would be likely, on the balance of probabilities, to result in a definable change to the character and appearance of the site and the access lanes to it. I also conclude that this doubling of the numbers of caravans on the site would give rise to adverse impacts to the visual character of the area in terms of views of the site from users of FP209, FP113 and the A31. For these reasons I conclude that there would be a MCU of the appeal land. Consequently, the Council's decision to refuse the application was well-founded and the appeal is therefore dismissed.

Nick Fagan

INSPECTOR