
Appeal Decision

Site visit made on 10 June 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Appeal Ref: APP/W9500/X/23/3321210

Haggit Howe Caravan Site, Saltwick, Whitby YO22 4JY

- 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 Ms Lisa Trotter against the decision of the North York Moors National Park Authority.
- The application Ref NYM/2022/0780, dated 25 October 2022, was refused by notice dated 15 December 2022.
- The application was made under section 191(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 described as the use of land to site 6 holiday static caravans.

Summary Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. The application is described in the National Park Authority's notice of refusal as 'the use of land as a holiday park comprising six static caravans', thus slightly differing from the description given in the application. The particular type of caravan used, although controlled by the relevant site licence, is not said by any party to give rise to any material matters for consideration concerning the land use. I therefore consider generally whether or not the use of the land as a holiday caravan site was lawful on the date of the application.
2. Having regard to that site licence (and its earlier iterations) I consider that question on a seasonal basis, and I also consider whether the description of any certified lawful use should refer to the number of caravans concerned. In these matters I am not concerned with the planning merits of the case but only with what the appellant has demonstrated, on the balance of probabilities, to be lawful at the date of the application.

Main Issues

3. The main issue arising is whether the development described is lawful. Lawfulness may be conferred in a number of ways (such as by the grant of a planning permission) and the specific matter relied on here is whether the use has been ongoing for so long that it has become immune from enforcement action. Section 171B(3) of the 1990 Act provides that 'no enforcement action' may be taken after the end of the period of ten years beginning with the date of the breach of planning control, and section 191(2) provides that a use of land against which no enforcement action may be taken is lawful for the purposes of the Act.

4. It is not in dispute that a material change of use of the land to use as a holiday caravan site is development for which planning permission is required, and has not been granted by a development order.
5. In the alternative, the appellant claims the 'presumption of regularity' applies. This is the principle that a public authority is presumed to have acted lawfully. The appellant points to a succession of site licences issued by the relevant licensing authority (formerly Scarborough Borough Council) and states that these could not lawfully have been issued without the licensing authority having been satisfied that a planning permission had been granted for the use. I am therefore invited to find that a planning permission must have been granted at some point, but is now presumed lost, although other explanations could apply which I will consider below.

Reasons

The use

6. A number of statements are supplied to the effect that the land has been used for the siting of holiday caravans for very many years. The use is claimed to have taken place since the 1960s and one letter refers to the caravans having been sited in the late 1940s or early 1950s. There is however no relevant planning history available either to the Authority or to the appellant.
7. Photographs are also supplied showing caravans of varying numbers and types, including one said to be from around 2010/11 showing six caravans and another, found in the Authority's officer report, showing the same number in 2015. A photograph dating from the early 1960s appears to show four caravans. A letter from a former employee describes six caravans from 1977, apparently established for very many years by that point.
8. Although the Authority's officer report takes issue with whether six 'static' caravans have been demonstrated at any point, I do not understand them to seriously dispute the historic use of the site for siting six holiday caravans of some form for a period well in excess of ten years. The principal dispute between the parties concerns the effect of the apparent cessation of the use some time around 2016-2017 and the implications of that cessation for the grant of any certificate.

Whether benefitting from a permission

9. The earliest site licence supplied to me dates from 1980. It was granted to the late Mr B C Dixon, with the site itself described as 'Haggett Howe' although there appears no dispute that it relates to the same land despite the difference in spelling. The licence was issued pursuant to the Caravan Sites and Control of Development Act 1960.
10. That Act provides (and provided, at the material time) that a local authority responsible for the licensing of caravan sites (in this case, the former Scarborough Borough Council, whose functions have more recently been taken over by the North Yorkshire Council) may issue a site licence in respect of the land only if the applicant is entitled to the benefit of a planning permission for the use of the land (granted otherwise than by a development order) as a caravan site.

11. The 'presumption of regularity' essentially means that, in the interests of legal certainty, a local authority is presumed to have acted lawfully when discharging its functions. The principle received some discussion in R (Archway Sheet Metal) v Secretary of State for Communities & Local Government, London Borough of Haringey and Tottenham Hotspur Ltd [2015] EWHC 794 (Admin).
12. The site licences have not been set aside and thus, although there is no record of an express grant of planning permission, it follows that Scarborough would appear to have been satisfied of the existence of a planning permission when discharging their functions in respect of the relevant site licences. Equally, however, the fact that there is no record of any planning permission on the Authority's register gives rise to the presumption that one has not been granted. The obligation to keep a register of planning applications was found in section 14 of the Town and Country Planning Act 1947 and remains a statutory requirement of the local planning register authority.
13. If the use were, as is possibly suggested by one correspondent, taking place before the 'appointed day' for the purposes of the 1947 Act (July 1, 1948; or has been consistent with the Special Provisions now found in Schedule 4 of the 1990 Act) then permission might not have been required for the use. This might explain the absence of any record of a permission; but I must presume that the site licences were lawfully issued.
14. Nonetheless the presumption only extends so far. Whilst it must be presumed that the site licences have been lawfully issued, I am not convinced that the application of the presumption extends to presuming, for present purposes, any particular factual matrix resulting in Scarborough's decision to issue a site licence. Whilst the site licences, issued by a different public authority and for a different purpose, are somewhat persuasive as to the lawful origin of the use, they are not determinative of it. Ultimately my decision does not turn on this point.

Cessation of the use

15. I do not understand the facts of the case to be in serious dispute between the parties. Mr Dixon, formerly of Brook House which lies around 200 yards to the WNW of the site, died in 2009. His widow continued to run the site and the site licence was transferred to her in 2013. There was some reduction in the number of caravans kept at the site. In, or by, 2017 the fence surrounding the site was removed and no caravans were kept at the site from that year onwards. In 2017 Mrs Dixon died, and the land was subsequently sold by her executors in or around July 2020. Enquiries were made of the Authority by the new owners in October 2020 as to the planning position in respect of the use of the land as a caravan site. The site licence was transferred to the new owners in the same year.
16. The appeal site's ownership has been severed from its original landholding. I have not seen the extent of the relevant titles, but it appears that for many years it was owned and operated by the occupants of Brook House. It has since been purchased, I understand, by the present operators of the nearby Highgate Howe caravan site. The Authority suggest that some change to the physical extent of the planning unit has followed as a result. However, there is nothing in the site licences or any of the correspondence before me to suggest that the appeal site was to be viewed as part of any wider planning unit during its seasonal occupation.

Whether use rights lost

17. The Authority relies on the case of *Ellis v SSCLG* [2009] EWGC 634 to say that, because the use was not ongoing at the date of the application for a certificate, no certificate could now be granted with any former use rights having been lost upon that cessation. Thus the Authority's case is that if the use were to take place it would now be susceptible to enforcement action, and a certificate could not be issued for that reason.
18. I consider the judgment of the High Court in *R (Ocado) v Islington LBC* [2021] EWHC 1509 (Admin) is to be preferred to those in *Ellis* and in *Nicholson v SSE & Maldon DC* [1998] JPL 553 on this point. As the appellant points out, the relevant requirement of the 1990 Act for a use to be lawful is simply that no enforcement action can be taken in respect of the use, and that its continuance is not in breach of a subsisting enforcement notice (s. 191(2)).
19. In any event the Authority has not asked itself the question whether the use, which had undoubtedly acquired lawfulness by 2016 if only by reason of the passage of time, was merely dormant at the time of the application. *Panton & Farmer v SSCLG* [1999] JPL 461 and *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 are authorities for the proposition that a use can be regarded as being dormant for planning purposes where it has already accrued lawfulness through the passage of time (or is otherwise lawful). A dormant use is nonetheless an 'existing' use.
20. The Court in *Ocado* was concerned with the question of a planning condition. It held that if a condition has been breached continuously for any ten-year period, without significant interruption, the breach will be lawful thereafter, unless that lawful right has been lost through some event sufficient to terminate it. The Court left open the question of the nature of the events which might terminate that right.
21. Lawful use rights generally may be lost in a number of ways including by a material change of use to another use, by the implementation of an inconsistent planning permission, or by abandonment. Use rights conferred by a planning permission may similarly be lost by an intervening use.
22. Taking the Authority's case at its highest, which is to say to assume that the use had no planning permission or other lawful origin, and a ten-year period of use giving rise to immunity is relied upon, the relevant question is then whether those lawful use rights have been lost in one of the ways described above. There has been no planning permission granted for any other use. The question is therefore whether a material change of use had been made, or the lawful use had been abandoned, by the time of the present application.
23. The Authority refer to the removal of the fence and gate at the site by 2017 and the restoration of the site to grazing land. The removal of the caravans from the site between seasons of occupancy is contemplated by the site licence and is not of itself indicative of a permanent change of use. It is not clear to me for how long the site was fenced, or what condition it was in when removed, or for what reason it was removed. On viewing the site I saw that a water tap and a small utility building, apparently consistent with the aerial photographs since 2015 reproduced in the Authority's officer report, remained in situ.

24. Thus the physical condition of the land is such that it remains equipped with some facilities to enable its use as a caravan site. The intervening use for grazing is consistent with the seasonal reversion for that purpose and is not incompatible with its resumption as a caravan site, although I acknowledge that the absence of any caravans since 2017 means that it is not in any active use as such.
25. Turning to the period of non-use and the owner's intentions, abandonment of a use involves its cessation in such a way and for such a time as to give the impression to a reasonable objective onlooker that it was not to be resumed. The context here of the decline and eventual cessation of the active use appears to have been the widowhood and subsequent failing health of the former owner, followed by a period of estate administration. The site remained liable for business rates as a caravan park & premises until at least March 2018. It was then apparently marketed for sale as having some potential for use as a caravan site. The acquiring owner has evidently wished to pursue such a use, as has been expressed in correspondence to the Authority since 2020 and by obtaining a transfer of the site licence.
26. In the round I do not think that the cessation of the active use in 2017 could have resulted in a probable conclusion that the use had been abandoned by 2020 (since when the evidence of the present owner's intentions is very much to the contrary) or by 2022 when the present application was made. In any event it is a conclusion I do not share. The site retains some physical characteristics of a caravan site. The decline and eventual cessation of the active use appears to have been consistent with the widowhood and subsequent declining health of the former owner. For some time the land was then subject to administration by executors. The only other use appears to have been as grazing land which is anyway consistent with the seasonal cessation of the use. In the context of a site that has operated for at least 50 years this relatively short cessation does not indicate a material change or abandonment but instead I conclude that the use is existing, albeit dormant.

Scope of the certificate

27. It follows that the appeal will be allowed and a certificate will be granted. I have received nothing to indicate that the stipulations of the successive site licences have not been complied with, and thus consider that the scope and extent of the use has been so limited. Therefore the certificate will specify that the use found to be lawful consists of a holiday caravan site of not more than six caravans occupied only during the period between March and October in any year. Modifying the description in this way is consistent with my discretion under section 191(4) of the 1990 Act. There has been no suggestion that the seasonal nature of the use is itself any bar to the granting of a certificate based on a ten-year immunity period arising from continuous use; and the North Devon cases (*North Devon DC v SSE & Rottenbury* [1998] EGCS 72; *North Devon DC v FSS & Stokes* [2004] JPL 1396) suggest that it is not.

Conclusion

28. For the above reasons I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use in respect of a seasonal holiday caravan site for not more than six caravans at Haggitt Howe was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

29. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Laura Renaudon

INSPECTOR

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 25 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 use existed at the date of the application; more than ten years had elapsed since the date of the breach, during which ten years the seasonal use had continued without significant interruption; and thus no enforcement action may then have been taken because the time for enforcement action had expired.

Signed

Laura Renaudon

INSPECTOR

Date 17 June 2024

Reference: **APP/W9500/X/23/3321210**

First Schedule

Use of the land as a holiday caravan site consisting of not more than six caravans between 1 March and 31 October in any calendar year.

Second Schedule

Land at Haggit Howe Caravan Site, Saltwick, Whitby YO22 4JY

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 June 2024

by **Laura Renaudon LLM LARTPI Solicitor**

Land at: Haggitt Howe Caravan Site, Saltwick, Whitby YO22 4JY

Reference: APP/W9500/X/23/3321210

Scale: DO NOT SCALE

