



Appeal Decision

Hearing held on 2 July 2024

Site visit made on 2 July 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/U1105/X/23/3330294

Salcombe Regis Camping & Caravan Park, New Barn, Salcombe Regis, SIDMOUTH, EX10 0JH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gary Burns against the decision of East Devon District Council.
 - The application ref 23/0027/CPL, dated 5 January 2023, was refused by notice dated 10 August 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 Use of land for the siting of 100 static caravans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is part of a long-standing camping and caravan site comprising about 6.5 ha of land just to the north of Salcombe Regis, a small hamlet. The overall site is laid out as 2 fields roughly similar in size. The appeal concerns the northernmost field. The application plan encompassed all of the northern field, but at the hearing an amended plan was agreed which excludes a roughly rectangular area at the northernmost corner that has planning permission for caravan storage and is used as such. It was also agreed that the description of development for which the LDC is sought should be amended to make it clear that the number of static caravans should be 100.

Reasons

3. The overall camping and caravan site has an extensive planning history, but it is agreed that planning permission Ref. 96/P0664, granted on 17 June 1996 is the relevant governing permission for the purposes of the application and appeal. The description of the development for which approval was sought was "Modification of conditions to allow 100 touring pitches." Additional information provided on the application form stated: "The current Planning Consents are for 40no touring caravans, 30no motorised caravans and 30no tents, - 100no touring pitches in all. This application is to modify these consents to 100no touring pitches, for either tents, caravans or motorised caravans use." The decision notice described the "Proposal" as "Amendment of conditions to allow 100 pitches for either tents, caravans or motor caravans." Permission was

granted subject to 5 conditions. Condition 1 is a standard commencement condition, and the other 4 conditions all place restrictions on "touring units".

4. It is agreed that the term "touring unit" encompasses touring caravans, motorised caravans (motorhomes) and tents, but not static caravans/mobile homes. Preceding the conditions on the decision notice is the following declaration: "The Council hereby grants permission to carry out the development described in the application and the plans attached thereto subject to the following conditions."

Main issues

5. For the avoidance of doubt, in an appeal made under section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision will rest on the facts of the case, and on relevant planning law and judicial authority. In a LDC appeal the main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This turns on whether the proposal is within the scope of the 1996 planning permission, and if not whether it would amount to a material change of use.

Scope of the 1996 planning permission

6. Although described as an application to modify conditions on a previous permission, which would suggest that the application could have been made under s73 of the Act, the application form indicates that it was a full application. The permission on approval is a stand-alone permission in any case, but the previous permission, which apparently dates from 1960, has not been located and so cannot in any case assist interpretation of the 1996 permission.
7. While recognising that the description of development on the application form was not accurately reflected in the decision notice, specifically what is recorded on the face of the notice as the "Proposal", the appellant maintains that the 1996 permission must be interpreted on the basis of the decision notice document itself which they claim unequivocally provides for caravans in the description of development and does not contain any constraint on the type of caravan, either by way of condition or by way of particularisation in the description of development. Since the statutory definition of "caravan"¹ applies in construing all permissions relating to caravans, it is claimed that the siting of static caravans is within the scope of the permission.
8. They also point out that because the interpretation of a planning permission is an objective question of law, it is irrelevant to ask what were the intentions of the parties involved in its genesis. Hence whether the difference between the words recorded on the decision notice as the "Proposal" for which planning permission was being granted and the description of development on the application form was intentional or not is irrelevant. They argue also that it is not uncommon for a development proposal to change over the course of the decision making process so that any inconsistency between the description of development on the application form and the 'Proposal' on the decision notice

¹ Section 29 of the Caravan Sites and Control of Development Act 1960 and s13(1) of the Caravan Sites Act 1968

may well not be an error, and that in any case any such inconsistency should be resolved in favour of the decision notice.

9. As the judgement in *Hillside Parks*² makes clear, the scope of a planning permission depends on the terms of the document recording the grant, the decision notice in this case. However, in this case the operative part of the permission dealing with the development and the terms in which the planning permission is granted does not make any reference to the description relied upon by the appellant, but is specific in granting permission for the "development described in the application", namely "Modification of conditions to allow 100 touring pitches." While that might mean that the holder of the permission document itself would need more in order to understand what is permitted, that is not unusual. It would be expected where the application is properly incorporated into the permission and is therefore a part of it, which I consider to be the case here, or in the case of a full permission for operational development, which is incomplete without the plans. This is not a case where the application is being resorted to in order to resolve an inconsistency or ambiguity. I consider that a reasonable reader would understand the words used in the permission to mean that the description of the development for which planning permission was being granted was to be found in the application. This interpretation is not contrary to *Hillside*, which, considering the nature of planning permission documents, stated that the meaning of the document recording the grant should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application, and physical inspection of the land to which it relates.
10. Furthermore, although I do not consider it necessary to rely upon them to properly construe the permission, it would be abundantly clear to a reasonable reader that the conditions and the reasons for them are not consistent with planning permission for a simple caravan and camping site on which any type of caravan could be sited. The conditions refer only to 'touring units' and limit their number on the southern field to preserve the character and appearance of "this sensitive part of the Area of Outstanding Natural Beauty"; prevent touring units remaining on site during some winter months to ensure that they are not used permanently for residential purposes; prevent any one unit remaining on site for more than 4 weeks in one year to ensure that adequate provision is retained for use by touring caravans; and prevent the use of any one touring unit by a person, family or organised group for more than 4 successive weeks in one year to ensure that the unit is not used permanently for residential units. The conditions would be otiose if the appellant's interpretation of the permission was correct.
11. Reading the permission as a whole then, a reasonable reader would be in no doubt that what was being permitted was a campground for tents, touring caravan and motorhomes for holiday purposes, with only minor restriction on the relative numbers. In other words, the Council was approving what had been applied for. It is well established that the siting of static caravans does not come within the scope of a permission that is specifically for touring units, which encompasses touring caravans and motorhomes.

² *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30

Material change of use

12. The stationing of static caravans, whether for holiday use or permanent residential use, is not prohibited by the permission. Such use falls outside the scope of what was granted planning permission, but it would only require planning permission if it amounted to a material change of use of the land. That requires comparison of the existing lawful use and the proposed development.
13. Taking into account other permissions, the full extent of what is permitted on the overall camping and caravan site (excluding the caravan storage area), which is the relevant planning unit for the assessment of materiality, amounts to 100 touring units across the northern and southern fields, units in the latter being a maximum of 60, of which no more than 30 can be caravans or motorhomes, and 23 static caravans. The static caravans include 11 sited within the northern field alongside the highway boundary at the north-western edge of the site, and a further 12 which can be sited between the existing statics and the spine road through the site. The existing 11 statics benefit from planning permission enabling them to be retained on site but not occupied from November to mid-March the following year in the case of 10. The other, for a site warden, is restricted to someone engaged in site management but may not be occupied between 15 December and 31 January the following year. The further 12 are not in place but benefit from an extant planning permission restricting them to occupation for holiday use only.
14. The proposal would see 100 static caravans sited on the northern field. The application was made on the basis that these would be the 100 caravans permitted by the 1996 permission, so that they would be in addition to the 23 already permitted on the northern field. However, I have approached the question of material change of use on the basis that the total number of static caravans on the northern field would be 100. This is how the application was reframed at the hearing and it was subsequently agreed as the appropriate comparison. The 23 noted above would be restricted to holiday use, but the other 77 would not and so could be used for permanent residential purposes.
15. Most of the 77 additional static caravans would have to be sited to the west of the central access road, an area that has an open parkland character, caravans on the northern field currently being sited on approximately 36 hardstandings arranged alongside an internal circulation road close to the field boundaries.
16. Although some touring caravans are similar in size to static caravans or mobile homes, static caravans are generally substantially larger than touring caravans, and when in full-time residential use typically have more permanent features such as decking or more formalised landscaping such as patios, along with domestic paraphernalia. No layout has been provided, but to accommodate the number of static full-time residential caravans proposed would clearly entail stationing caravans across much if not all of the existing open area. The absence of hardstanding on this area currently means that it is most likely to be only used for touring units in drier conditions, if at all, and given the availability of standings more suited to caravans and motorhomes elsewhere on the site it is likely to remain predominantly open, at least outside of peak holiday months.
17. Hence the stationing of the 77 static caravans in addition to the 23 static caravans that are or may be stationed to the west of the spine road in the

northern field would see the northern field entirely occupied by static caravans, 77 of which could be used for permanent residential purposes. Thus the appearance of the northern field would change from a largely open field with a cluster of permanently stationed caravans at the western side and transient structures on the remainder seasonally to one that is, in all likelihood, entirely occupied by static caravans along with their associated bases and the other development and paraphernalia that goes along with permanent residential use. That change would be immediately evident on entering the site. From outside the site the intervening caravan storage area and the row of existing static caravans would partially screen or filter most roadside views, but the change in terms of site openness would be visually evident from the site entrance, and from the public highway at night due to the permanent presence of residential caravans on what is likely to otherwise be a lightly, and seasonally, used space.

18. Changes in the traffic environment would also be likely, permanent residents typically having different movement patterns to holiday makers, and it would be constant year-round traffic generation rather than seasonally changing levels of use by holiday makers. Similarly, light generation, noise and general activity would be constant rather than seasonally fluctuating, and there would be a far more intensive use of the northern field.
19. Overall I consider, as a matter of fact and degree, that there would be a substantial and material change in the character of the use of the northern field if there were permanent residential use over much of it facilitated by the provision of permanently stationed static caravans compared to what is currently permitted, that is seasonally fluctuating holiday use by generally smaller and transient structures with a complete absence of occupancy and related activity in the winter close season across most³ of the site and a return in that period to the open character of the eastern part of the field which would be devoid of residential structures of any kind.

Conclusion

20. The siting of 100 static caravans in the northern field does not fall within the scope of the 1996 permission, and it would amount to a material change in the use of the land that would require planning permission.
21. 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 siting of 100 static caravans on the application site 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.

Paul Dignan

INSPECTOR

³ The 12 static caravans permitted by permission Ref. 11/0123/COU can be used year round for holiday purposes.

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	Barrister
Gary Burns	Appellant
Joney Ramirez	RPS

FOR THE LOCAL PLANNING AUTHORITY:

Odette Chalaby	Barrister
Jamie Quinton	EDDC
Damien Hunter	EDDC
Gareth Stephenson	EDDC

INTERESTED PARTIES:

Mike Parker	Local resident
Mark Claydon	Local resident
Thomas Clarke	Local resident

DOCUMENTS

1. Letter to EDDC confirming commencement of Planning Permission Ref. 11/0123/COU
2. Amended application plan (12712-0001-05 Site Location Plan) agreed by the main parties, by email dated 8/7/2024.