



Appeal Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2024

Appeal Ref: APP/E2205/X/23/3326971

Spill Land Caravan Park, Benenden Road, Biddenden TN27 8BX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Monte Carlo Parks Ltd against Ashford Borough Council.
 - The application ref 21/01190/AS is dated 25 June 2021.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is the siting of up to 130 static caravans in accordance with planning permission reference 18/00945/AS.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the proposed use which is found to be lawful.

Preliminary Matters

2. The appeal is made in respect of the Council's failure to issue a decision within the relevant time frame. In its appeal questionnaire the Council claimed the application was invalid because the declaration on the application form stated that the applicant was the owner of the site. The application form unhelpfully provides the applicant's details as 'see company name, c/o Agent'. The covering letter which accompanied the application refers to it being submitted on behalf of 'Monte Carlo Parks Ltd/James Crickmore'. The appeal form states the appellant is Mr James Crickmore, Monte Carlo Parks Ltd.
3. It was confirmed that the applicant and the appellant are Monte Carlo Parks Ltd, a subsidiary of the company which owned the site at the time of the application. Mr Crickmore is/was a representative of Monte Carlo Parks Ltd. The Council's representative at the Hearing was unaware of any objection to the validity of the application or the appeal and did not dispute the foregoing details. I therefore see no reason to find the application or the appeal invalid.
4. The application form also fails to provide information relating to the proposal, referring to the covering letter instead. The covering letter states that the application seeks to establish that the site can be used for the siting of up to 130 static caravans and refers to various planning permissions. Without specifying the use or purpose of caravans, the proposal would be unclear and ambiguous. It was therefore agreed at the Hearing that the description of the proposal should refer to the relevant planning permission that the siting of up to 130 static caravans is claimed to accord with. Amending the description of the proposal in this manner, as set out in the banner heading above, would

not prejudice or have implications for any parties who were not at the Hearing, as its substance remains unchanged from that publicised by the Council.

Background

5. There is an extensive planning history relevant to the appeal, starting with planning permission¹ granted by the Council on 20 November 1981 for 'Use of land as a caravan site for the stationing of 65 static holiday caravans and 65 touring caravans and the winter storage of 25 touring caravans' ('the 1981 PP'). Condition B of the 1981 PP restricts the occupation of caravans to the period 1 March to 31 October each year.
6. The Council subsequently granted planning permission² on 12 December 1988 or 1989 for 'Variation of Condition B attached to planning permission AS/81/1428 to permit the occupation for holiday purposes during the period November to February inclusive of touring and hired caravans by tourists, hired van occupiers and visitors to the area' ('the 1988 PP'). This planning permission is not subject to any conditions. The precise year of the decision is unclear on the Council's records, but that is of no consequence to the appeal.
7. Planning permission³ was then granted by the Council on 3 May 2006 for 'Variation of planning condition to extend the occupancy season to 10 1/4 months', subject to 5 conditions ('the 2006 PP'). The application form clarifies that the application was made in respect of Condition B of the 1981 PP. There are 3 conditions attached to the 2006 PP of relevance to the appeal: Condition 2 prohibits the occupation of caravans outside the period 1 March to 7 January each calendar year; Condition 3 restricts the use of caravans to holiday accommodation; and Condition 4 prohibits the occupation of caravans as the occupants' sole or main place of residence.
8. Finally, the Council granted planning permission⁴ on 21 August 2018 for 'Removal of condition 2 of planning permission 06/00457/AS to allow 12 month holiday season', subject to 3 conditions ('the 2018 PP'). Conditions 1 and 2 replicate Conditions 3 and 4 of the 2006 PP. There are no conditions restricting the period of occupation of any caravans, or the number or type of caravans which may be stationed on the land.
9. It is agreed by the main parties that the above planning permissions and the appeal all relate to the same area of land, as edged in red on the site location plan, which is a single planning unit with one primary use. It is agreed by the main parties that each of the planning permissions were implemented within the relevant timescales and that there have been no material changes of use or abandonments of use since the 2018 PP was implemented. I see no reasons to disagree with any of this.
10. The appellant clarified that the proposal does not include any operational development and that an LDC is sought only for the siting of caravans. By definition⁵, these would be moveable structures, and it is therefore clear that no operational development is proposed. As such, any laying of unauthorised hardstanding at the appeal site did not comprise the commencement of the

¹ The Council's ref: AS/81/1428

² The Council's ref: 88/00415/AS

³ The Council's ref: 06/00457/AS

⁴ The Council's ref: 18/00945/AS

⁵ Section 29(1) of the Caravan Sites and Control of Development Act 1960 and section 13 of the Caravan Sites Act 1968 (as amended)

proposal. Furthermore, although I noted some static caravans have plot numbers above 65, there were not 130 static caravans at the site. I shall therefore proceed to determine the appeal under section 192 of the Act.

Main Issue

11. The main issue is whether the Council's deemed refusal to grant an LDC was well-founded, with particular regard to whether the proposal would constitute a breach of condition or a material change of use.

Reasons

12. For the purposes of the Act, uses are lawful if no enforcement action may be taken in respect of them, and they do not constitute a contravention of an enforcement notice⁶. Sections 55 and 57 of the Act set out that planning permission is required for the making of any material change in the use of any land, amongst other things, apart from in circumstances which are not relevant to this appeal.
13. The 1981 PP authorised a material change in the use of the land to a holiday caravan site. The description of the development in the decision notice clarifies that the authorised use could involve the stationing of 65 static holiday caravans and 65 touring caravans and the winter storage of 25 touring caravans. That is clear from the face of the planning permission, which is unambiguous. Each of the planning permissions granted since authorise the same use of land on account of their references to the 1981 PP, subject to different conditions.
14. Caselaw⁷ explains that if a limitation is to be imposed on a planning permission, it has to be done by condition. It was found in subsequent caselaw⁸ (with some similarities to the appeal) that a planning permission to station 54 caravans on a site, with no conditions limiting the number of caravans, permitted the stationing of more than 54 caravans provided there was no material change in the use of the land.
15. The Council has failed to provide compelling arguments as to why I should follow any different approaches to those endorsed by the above legal authorities. The 2018 PP post-dates that caselaw, and it remains unclear why the Council did not attach any conditions to that planning permission controlling the number and type of caravans if that was always its intention.
16. I draw no inference from the description of the proposal as to whether the appellant accepts any limit on the number of caravans which may be lawfully sited on the land. While it is correct that the operative part of a planning permission has a binding effect on the development which can be carried out, this does not prohibit any subsequent change of use which is not material.
17. I am therefore entirely unpersuaded by the Council's argument that the proposal would be unlawful because the appellant is unable to submit an application under section 73 of the Act to change the number or type of caravans referred to by any of the planning permissions. This is because there

⁶ Section 191(2)

⁷ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107, R (*Altunkaynak*) v Northamptonshire Magistrates' Court [2012] EWHC 174 (Admin)

⁸ *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC* [2014] EWHC 1138 (Admin)

would be no need to submit such an application if there would be no material change in the use of the land.

18. The main parties agreed at the Hearing that the site has a primary use as a caravan site, based on its use in accordance with the above detailed planning permissions. However, it is clear from the descriptions of the development authorised by each planning permission and their associated conditions that they do not authorise a caravan site in general, but very specifically a caravan site for holiday purposes only.
19. It is not disputed that 65 static holiday caravans and 65 touring caravans may be stationed on the land in accordance with the 2018 PP. The crux of the matter in dispute is whether a change of use of the land to a caravan site for holiday purposes with 130 static caravans would be a material change of use.
20. I did not see any touring caravans on the site. Many of the static caravans present had a number of external physical additions such as brick or composite skirts, and timber or composite decking and stairs. There were examples of other potential developments associated with static caravans too, such as sheds and driveways. However, it does not follow that in order for up to 130 static caravans to be sited on the land they must all be accompanied by similar developments, which may or may not require express planning permission from the Council. Furthermore, although some of the existing developments associated with static caravans may be unauthorised, there is nothing to show the proposal would rely on any enabling development.
21. The site is largely open to views from surrounding fields, a public footpath, and the road. Its levels rise to the northeast. Narrow access roads wind around the site providing vehicular access to parking areas serving individual plots. There is little space for planting between plots which are served by separate electricity, water, and foul sewage points. Overall, it has the character of a rural caravan site, dominated by tightly arranged, large, modern static caravans with high quality finishes.
22. The legislation referred to above makes no distinction between static and touring caravans. Static caravans are normally larger in size and have slightly different shapes compared to tourers. They also tend to offer higher standards of amenities on account of their internal arrangements and insulation, and they are often moved onto sites by flatbed trucks/cranes, rather than towed by cars. This does not, however, indicate that statics are necessarily used to a greater extent in winter months, when tourers are also capable of being occupied year-round. Overall, these are very general and insignificant differences in the planning context, which may not apply in all instances.
23. Compared to the existing use, or the occupation of 65 static caravans and 65 touring caravans for holiday purposes, the proposal would not have any notable effect on the local water, sewage, or electricity infrastructure, or medical facilities. This is because the type and intensity of occupation would be broadly similar. By the same reasoning, the proposal would not result in a significant increase in local traffic compared to how the Council accepts the site can be used lawfully.
24. I therefore find, with regard to the planning history, existing use, and physical features specific to the site, there would be very little change to the definable character of the use of the land if up to 130 static caravans were to be sited

there and occupied in accordance with the 2018 PP. It would remain a holiday caravan site.

25. In conclusion, the proposal would not result in a breach of condition or a material change of use, and there would be no breach of planning control. I have not been referred to any enforcement notices the proposal may conflict with, and the proposal would have therefore been lawful on the date of the application.
26. The separate carrying out of any unauthorised tree or hedgerow removal, or any unauthorised development, within or around the site does not affect the lawfulness of the proposal.

Conclusion

27. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the siting of up to 130 static caravans in accordance with planning permission reference 18/00945/AS was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Boother Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mark Campbell Planning Consultant

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 June 2021 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: Planning permission reference 18/00945/AS dated 21 August 2018 authorises the use of the land as a caravan site for the stationing of 65 static holiday caravans and 65 touring caravans and the winter storage of 25 touring caravans, subject to conditions. There are no conditions or limitations attached to that planning permission which restrict the number or type of caravans which may be sited on the land, and the siting of up to 130 static caravans in accordance with that planning permission would not constitute the making of any material change in the use of the land. The siting of up to 130 static caravans in accordance with planning permission reference 18/00945/AS on 25 June 2021 would not have therefore involved the carrying out of development requiring planning permission and would not have failed to comply with any condition or limitation subject to which planning permission has been granted.

Signed

L Douglas

Inspector

Date: 15th October 2024

Reference: APP/E2205/X/23/3326971

First Schedule

The siting of up to 130 static caravans in accordance with planning permission reference 18/00945/AS

Second Schedule

Land at Spill Land Caravan Park, Benenden Road, Biddenden TN27 8BX

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in this decision dated: 15th October 2024

by L Douglas BSc (Hons) MSc MRTPI

Land at: Spill Land Caravan Park, Benenden Road, Biddenden TN27 8BX

Reference: APP/E2205/X/23/3326971

Scale: Not to Scale

