



Appeal Decision

Inquiry held on 27 & 28 February 2024

Site visit made on 27 February 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/X1545/X/22/3298784

Waterside Country Park, Main Road, St Lawrence, CM0 7LY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended)(the "1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Waterside Country Park Ltd against the decision of Maldon District Council.
 - The application ref: 21/00637/LDP, dated 11 June 2021, was refused by notice dated 21 April 2022.
 - 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 use of land for the stationing of static caravans for the purposes of human habitation throughout the year.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs was made Maldon District Council against Waterside Country Park Ltd. This application is the subject of a separate decision.

Procedural Matters

3. The application form describes the use for which a LDC is sought as '*the site benefits from an established use certificate and an allowed enforcement appeal and none of the later permissions were necessary or in the alternative did not contain enforceable conditions*'. Since it is not clear from the description provided on the application form what is being sought by the appellant, I have therefore had regard to the 'supporting statement', which is also referred to on the application form and which describes the application as being for the '*use of land for the stationing of static caravans for the purposes of human habitation throughout the year*'. This description more clearly describes what is sought and since it accords with the description set out within the Council's decision notice I have therefore determined the appeal on this basis.
4. Before the inquiry a written representation from an interested party was received querying the ownership of the site and who the appellant is for the purposes of this appeal. The application was submitted in the name of Waterside Country Park Ltd, whom the appellant explained had been put into administration in May 2023. The appellant went on to explain that Waterside Country Park Ltd remains an active company albeit in administration and it

was also confirmed that the appeal site remains registered to the company at the Land Registry. Therefore, on the basis of the evidence before me, the appellant's interest in the land is unchanged and I shall consider the appeal on that basis.

Planning history and background

5. An Established Use Certificate ("the EUC") was issued under section 17 of the Town and Country Planning Act 1968 on the 1 June 1971. It confirmed use of land for '*general recreation, camping, touring caravanning and picnicking*' was immune from enforcement.
6. In January 1983, planning permission was granted on appeal under section 36 of the Town and Country Planning Act 1971 (the "1971 Act") by the Secretary of State for use of land as a caravan site for holiday purposes ("the 1983 Permission"). The 1983 Permission was subject to the condition that 'no caravans shall be stationed on the land between 1 November in any one calendar year [and] 31 March in the next following year'.
7. At the time of granting the 1983 Permission, the Secretary of State also quashed an enforcement notice ("the Notice") alleging a change of use to '*use as a caravan site for the stationing of caravans and other structures for purposes of human habitation*'.
8. In a decision letter of the Secretary of State dated 6 January 1983, which concerned both the 1983 Permission and the Notice, it set out that the appeal against the Notice was made under grounds (a), (b), (c), (d), (e), (f) and (g) of section 88(1) of the 1971 Act. The appeal against the Notice succeeded on ground (b) of the 1971 Act. An appeal under section 88(1)(b) of the 1971 Act (now ground (c) for the purposes of the 1990 Act) is made on the basis that that the matters alleged in the notice do not constitute a breach of planning control.
9. An application¹ for variation of the condition attached to the 1983 Permission followed ("the 1986 Permission"). The Council's decision notice, dated 12 September 1986, describes the proposal as '*relating to use of the land at Beacon Hill Farm Leisure Park as a caravan site for holiday purposes so that caravans are permitted to be stationed on the land all the year round, subject to occupancy of the caravans being prohibited for use for human habitation between 1st November in any one calendar year and 31st March in the next following year*'. The decision was to grant permission and the words '*subject to compliance with the following conditions:*' are struck through within the template and the word '*APPROVE*' is inserted beneath.
10. Planning permission (the "1997 Permission"), reference FUL/MAL/97/0636 was granted on 29 October 1997 for a function room and the 'retention of consent ref: FUL/MAL/652/80 (i.e. the 1983 Permission) without compliance with occupancy conditions to allow site to open 9 months per year'. A number of conditions were imposed including Condition 4 which specified that 'no caravan shall be stationed on the site between 1 December in any one calendar year and 28 February in the next following year'. Condition 5 limited the use of the caravans covered by the permission for holiday purposes only. Condition 9 states 'the extension of the occupancy period of the site hereby approved shall

¹ Ref: MAL/532/86

be discontinued and the land restored to its former condition on or before 29 October 2000 to the satisfaction of the local planning authority.'

11. There then followed in 2000 an application to vary the 1997 Permission to extend its application until 1 November 2001 which was granted. A number of unsuccessful applications were made in 1997, 2000, 2001 and thereafter in April 2003, permission was granted for the continuation of the use without compliance with occupancy conditions as provided by the 1983 appeal decision and the 1986 permission to allow occupancy of the caravans/mobile homes for 9 months per year. Further unsuccessful applications followed in 2003, 2005, 2006 and 2017. An application for warden accommodation was approved in 2006.
12. An unsuccessful application for a certificate of proposed lawful use of 'the land for the siting of caravans for all year round occupation' was made under section 192 of the 1990 Act in December 2017. There followed an unsuccessful appeal² under section 195 of the 1990 Act against the Council's decision to refuse to grant a LDC in respect of a use which was, with the appellant's agreement changed by the previous Inspector to 'the siting of caravans for all year-round occupation for the purposes of human habitation' (the "2019 Appeal"). Subsequently, a challenge to the decision in the 2019 Appeal was made to the High Court which was refused permission for statutory review.

The 2019 Appeal Decision

13. In dismissing the 2019 Appeal, the previous Inspector identified the main issue to be '*whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded*'. The Inspector carried out a detailed examination of the planning history of the Waterside Holiday Park and concluded that the 1983 Permission was necessary because it provided for a single use, whereas the extant lawful use as provided by the 1971 EUC was a mixed use. It therefore followed that the 1983 Permission was necessary and capable of implementation and that the 1986 Permission was the governing permission for the appeal site. On the evidence before the Inspector, it was determined that the use proposed, would be a material change of use.

What is different since the 2019 Appeal and High Court Challenge?

14. The appellant's written evidence suggests that the present appeal has an "entirely different focus" to the case advanced within the 2019 Appeal and that the main argument presented to the previous Inspector concerned the status and effect of the 1986 Permission. It is contended that the status of the 1971 EUC and the 1983 Enforcement Notice appeal were "never a true focus of the arguments presented by the appellant" such that the previous Inspector's conclusions were derived from a different set of arguments being presented and were in the absence of detailed representations being made on those matters.
15. However, the Council contends that the appellant very clearly argued that reliance could be placed upon the 1971 EUC regardless of the subsequent permissions and my attention has been drawn to relevant parts of the decision letter for the 2019 Appeal.
16. In particular, at paragraphs 35-38:

² Appeal Decision APP/X1545/X/18/3202485

"35. The appellant's advocate argued at the Inquiry that the Secretary of State was unlikely to have granted planning permission for the whole holiday park when permission was unnecessary due to the 1971 EUC.

36. Even if the 1986 or 2000 permission bite, the appellant maintains that the applications were unnecessary. It was suggested at the inquiry that a planning application may have been made originally for reasons associated with the acquisition of a caravan site licence which would have required an express planning permission. The 1971 EUC did not confirm lawfulness. It was not until LDCs were introduced in July 1992 that lawfulness could be established. So, another explanation is that the 1983 planning application could have been made for the purpose of making the use a lawful one.

37. Whatever the reason, it is the appellant's case that there is a lawful use for the siting of caravans as per the 1971 EUC from which the proposal would not represent a material change of use. The council argues to the contrary and maintains that reliance cannot be placed on the EUC for a variety of reasons.

38. Thus, consideration is required as to the current status of the EUC".

17. Thereafter followed at paragraphs 39-60, a detailed consideration of the appellant's case in relation to the 1971 EUC including with reference to the application of *Newbury DC v SSE [1981] AC 578*.
18. At paragraphs 46-50 consideration was given to whether the subsequent permissions were unnecessary, and regard was had to the issue of the 1983 Enforcement Decision. The previous Inspector had regard to how the Secretary of State arrived at their conclusions and that the 1971 EUC should be considered as a mixed use. Those conclusions are set out within paragraphs 56-60 of the decision letter of the 2019 Appeal.
19. Based upon what I have read within the 2019 Appeal Decision, I take the view that the status of the 1971 EUC and the 1983 Enforcement Notice appeal were, together with the status and effect of the 1986 Permission, all matters which were central issues in the appellant's case. There are notable similarities with the arguments advanced in the 2019 Appeal Decision.
20. However, I have been referred to the recent decision of *Breckland District Council v SSHCLG and Plum Tree Country Park Limited [2020] EWHC 292 (Admin)* which I note was handed down on the 29 January 2020, which is after the date of the determination of the 2019 Appeal and the subsequent High Court challenge. The appellant places reliance on this matter as a material change in circumstances having occurred.
21. In addition, the 2019 Appeal is stated to have comprised a significantly different area of land and, having regard to the submitted plans the land comprising the 2019 Appeal, whilst overlapping in part with the current appeal site, it was more limited in size.
22. A number of documents which purport to be statutory declarations and which were not before the previous Inspector in the 2019 Appeal have also been submitted by the appellant as part of the current appeal.

Application of Issue Estoppel

23. Issue estoppel operates so as to prevent a person from re-opening a question(s) that have been adjudicated upon by a 'court of competent jurisdiction'.
24. Since the appellant seeks a LDC for the 'use of land for the stationing of static caravans for the purposes of human habitation throughout the year' which is the same as the reformulated description of the use sought as part of the 2019 Appeal, it is the Council's case that the same proposed use is claimed and thus the appellant is precluded from challenging the findings of the previous Inspector. I am invited to dismiss the appeal on the basis that the principle of issue estoppel applies.
25. As established in the case of *Thrasylvoulou v SSE (No.2) [1990] 2 WLR 1* there must have been a previous legal determination, which may include a determination by a previous Inspector, of the same or a relevant issue between the same parties or their predecessors in title, and without any material change in circumstances having arisen.
26. It followed in *Watts v SSE & South Oxfordshire District Council [1991] 1 PLR 61* that, for an earlier appeal decision to act as an issue estoppel, and where the relevant issue was determined on the basis of both fact and law, the whole matter must have been fairly and squarely before the previous Inspector who must have fully addressed the matter and made an unequivocal decision on it. That these three conditions were fulfilled should be clear on the face of the decision.
27. As followed in *Forrester v Secretary of State for the Environment (1997) 74 P&CR 434* there are four matters to be established if there is to be an issue estoppel:
 - i) the issue in question must have been decided by a court or tribunal of competent jurisdiction.
 - ii) the issue must be one which arises between parties who are parties to the decision.
 - iii) the issue must have been decided finally and must be of a type to which an issue estoppel can apply.
 - iv) the issue in respect of which the estoppel is said to operate must be the same as that previously decided.
28. The appellant suggests that in deciding the 2019 Appeal the Inspector was not a 'tribunal of competent jurisdiction' and that a determination by a Planning Inspector is not a determination by the Court but a determination on the basis of applying planning judgment to the facts, evidence and submissions made. In support, the appellant relies on *Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476* as evidence for the interpretation of a planning permission or a lawful development certificate being a matter of law for the Courts.
29. The appellant also cites *North Wiltshire District Council v SSE [1993] 65 P&CR 137* as being authority for a Planning Inspector considering similar or

even the same issues and not being bound by the earlier Inspector's decision provided there is a reason to depart from that decision.

30. It is established that a previous decision is capable of being a material consideration and this is, in part, to ensure that like cases are decided in a like manner. However, 'like cases' do not always have to be decided in a likewise manner and an Inspector must exercise their judgment. Furthermore, I am not persuaded that *North Wiltshire DC* is directly relevant in this instance given that, as identified in *Thrasyvoulou*, a distinction needs to be drawn between a decision to grant or refuse planning permission and a decision on the legal status of the development alleged.
31. In distinguishing between issues under ground (a) as to whether planning permission should be granted and legal grounds of appeal under grounds (b) to (e), Lord Bridge in *Thrasyvoulou* stated "*in determining whether to allow an appeal on that ground the Secretary of State will decide as a matter of policy and in the exercise of discretion whether planning permission should be granted and in relation to ground (a) no question of legal right arises. By contrast the question whether any of the grounds (b) to (e) on which the appellant relies have been established will be answered by applying the relevant rules of planning law to the facts found and the answer will determine in each case an important issue of legal right*".
32. While *Thrasyvoulou* concerned an enforcement notice, issue estoppel is capable of applying to LDCs, as confirmed in *Keevil SSCLG & Bath and North East Somerset Council [2012] EWHC 322 Admin*.
33. Section 191(2) sets out the circumstances in which 'uses and operations are lawful' for the purposes of the Act, meaning that section 191(2) also applies to LDC applications under section 192. Under section 191(2), uses and operations are lawful at any time if: a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of an EN then in force. As such, in an LDC appeal a judgment will be reached having regard to the relevant rules of planning law and applying these to the facts found to arrive at an answer which will determine in each case an important issue of legal right. I conclude on this point that the Inspector determining the 2019 Appeal was a 'tribunal of competent jurisdiction'.
34. Having regard to the final three points of *Forrester*, it is useful to have regard to *A & T Investments v SSE [1996] JPL B94*, where issue estoppel arising from a previous decision was relied upon. It was said that the appropriate steps to be taken should include i) identification of the question determined by the first Inspector, ii) identification of the finding or findings of fact and law that provided the essential foundation for that determination, and iii) consideration whether that finding or those findings would be expressly contradicted by the contentions in the current proceedings.
35. Several questions were determined by the Inspector, namely, as indicated above, the status of the 1971 EUC and the 1983 Enforcement Notice, the status and effect of the 1986 Permission and whether the subsequent permissions were implemented.

36. At paragraphs 56-60 the Inspector the previous Inspector concluded that:

"56. Based upon the facts before me, I am unpersuaded by the appellant's arguments that the 1983 permission was unnecessary. To my mind, there is a material difference between the mixed-use confirmed as immune from enforcement by the EUC and the single use as a caravan site for holiday purposes permitted by the permission across a slightly wider area.

57. It seems more probable than not that the 1983 permission was implemented to create a new chapter in the planning history. That being so, I can only conclude that the 1971 EUC can no longer be relied upon.

58. Even if I am wrong in that conclusion, I am not satisfied that the proposed use for the siting of the caravans all year round for the purposes of human habitation, as applied for, falls within the scope of the 1971 EUC.

59. The appellant points to the current application being strikingly similar to the development being enforced against in the 1983 appeal and which was found to be within the confines of the EUC. Both concern a use of land as a caravan site for the purposes of human habitation. They both relate to a part (albeit different parts) of the site covered by the EUC.

60. Nonetheless, the Secretary of State noted that the use which was the subject of the enforcement notice involved caravans being occupied only at intervals and for short periods. That is a sharp contrast to the proposed unlimited use all year round which could include permanent residential use. When looking at the specific wording of the established use it is for 'touring caravanning'. What is proposed here is not confined to the occupation of touring caravans nor is it limited to intervals or short periods. The very essence of the use would be different. The proposal is too far removed from the use confirmed as immune to come within the ambit of the 1971 EUC."

37. The parties to the 2019 Decision and this appeal are unchanged and the findings of fact and law that provided the essential finding for that determination would plainly be expressly contradicted by the arguments advanced by the appellant.

38. However, in light of the finding in *Breckland* the appellant relies on the point that the Inspector was wrong in her starting point of the 1971 EUC being for a mixed use (as was the approach adopted by the Secretary of State's approach in the 1983 Appeal) and thus the finding that the 1983 Permission was necessary was 'fatally flawed'.

39. *Breckland* concerned a certificate for lawful existing use or development for 'use of land as a caravan and camping site including an amenity area' and Lang J held that:

"where two alternatives are separated by the word "and", the natural and ordinary meaning is one can do both or either. One alternative does not restrict the scope of the other. Mr Glenister gave the example of a licence to serve hot and cold food, which could be used alternatively to serve any hot food or any cold food or both. Similarly here, the Site could be used for caravans or for tents or for both..."

40. In light of *Breckland*, the appellant claims that the 1971 EUC use is capable of being a single use. In doing so, the appellant places reliance on the Secretary

of State when considering the 1983 Notice considered that a single use was not a breach of planning control, a conclusion which the appellant says is consistent with the 1971 EUC being capable of compromising a single use which is therefore consistent with the approach followed in *Breckland*. The appellant points to the approach of the previous Inspector being in direct conflict with the approach established in *Breckland*.

41. The Council's case that there is 'nothing ground breaking' about the decision in *Breckland* and thus it has no bearing on the 2019 Appeal judgment. The Council contends that *Breckland* is simply authority for the proposition that the natural meaning of the word "and" in "caravan and camping" is that one can do both or either and that this same point was already established and accepted by the Secretary of State in the 1983 Enforcement Decision. In that decision, he found that the question of whether the "present" use is "materially different" from the established "touring caravanning" use must be determined on the basis that the 'touring caravanning' use was unlimited in time, extent or intensity". The Council emphasise that 'in other words, the caravan element of the mixed use in the EUC can be the predominant or main use of the site without the use going outside the scope of the EUC'.
42. However, since the judgment in *Breckland* was handed down after the 2019 Decision was made and the subsequent challenge to the High Court, the finding in *Breckland* could not and was not addressed. Thus, the arguments advanced by the appellant are not materially identical in this instance and thus the issue advanced as part of this appeal, which involves a mixture of fact and law, was not fairly and squarely before the tribunal. Furthermore, I do not see that the issue presently relied on could, with reasonable diligence, have been raised in the earlier proceedings as envisaged in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160 and *R. (DN(Rwanda)) v Secretary of State for the Home Department* [2020] AC 698.
43. The appellant also cites differences between the extent of land comprised in the current appeal site and that of the 2019 Appeal Decision, the current appeal site being materially larger in size than that in the previous appeal. However, in applying *A & T Investments* the key question is whether the issue or issues was or were the same and since the appellant's argument treats the two parts of the site the same and the issues to be determined are no different for each part, a change in area is irrelevant for the purposes of deciding issue estoppel in this instance.
44. The appellant has also submitted as part of this appeal a number of statutory declarations from owners of individual plots indicating how they have used their plot over time and from a former manager of the site. These statutory declarations did not form any part of the evidence before the previous Inspector as part of the 2019 Appeal. The purpose of the LDC provisions are to enable the making of an objective decision based upon the best facts and evidence available when the decision is taken and it is therefore open to an applicant to make a further LDC application on the basis of evidence that came to light after the LPAs refusal.
45. To conclude on this matter and having had regard to all submissions, I find that in light of the finding in *Breckland* the whole matter (as is advanced by the appellant in this instance) was not fairly and squarely before the previous Inspector and could therefore not have been expected to have taken account

of a finding that did not exist at that time. As such, the previous Inspector was unable to have fully addressed the matters raised as part of this appeal and to have made an unequivocal decision upon it as that evidence and case law was not before her at the time of the 2019 Appeal Decision. Therefore, the appellant is not estopped from advancing their argument in respect of the application of *Breckland* to the use established as immune from enforcement within the 1971 EUC and the effect, if any, on the necessity of the 1983 Permission and subsequent permissions.

Main Issue

46. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

47. An application under section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land are lawful.
48. Section 192(2) of the Act states 'if the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application'. Planning merits form no part of the assessment of a LDC application, which must be considered in light of the facts and the law.
49. The onus of proof is firmly on the appellant to make out their case to the standard of the balance of probabilities, to show that the proposal would be lawful at the time of the application being made.

The 1971 EUC

50. The absence of a plan for the 1971 EUC (and the 1983 Permission) was considered in detail by the previous Inspector as part of the 2019 Appeal at paragraphs 30 to 34 of the decision letter (DL). The previous Inspector, in considering the extent of the area of land covered by the 1983 Permission had regard to the location plan relating to the subsequent application for 1986 Permission, which showed an area outlined in yellow on that same plan and which was annotated as the "Established Use Cert". Since no party has sought to advance any alternative argument, I take the view that notwithstanding the absence of a plan with the 1971 EUC, it is likely that the yellow edged area corresponds with the relevant area of land forming the 1971 EUC. Broadly speaking it would appear that the appeal site in this instance coincides with the majority of the yellow edged land and thus an area which was covered by the 1971 EUC.
51. The 1971 EUC confirmed use of land for '*general recreation, camping, touring caravanning and picnicking*' was immune from enforcement.
52. Section 29(1) of the Caravan Sites and Control of Development Act 1960 sets out the statutory definition of "caravan" as meaning '*any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted but does not*

include (a) any rolling railway stock which is or the time being on rails forming part of a railway system, or (b) any tent.'

53. *Wyre Forest District Council for Secretary of State for the Environment [1990] 2 AC 357* confirmed that the statutory definition of "caravan" is a *prima facie* meaning to be applied to a planning document and was the default meaning, absent some reason to justify a departure from it.
54. Section 57 of the Act confirms that planning permission can only be granted for 'development' and section 55 defines 'development' as the "carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of the buildings or other land"
55. As established in *Newbury DC v SSE [1981] AC 578* if the implementation of a planning permission leads to the creation of a new planning unit, then the existing use rights attaching to the former planning unit are extinguished. However, a grant of planning permission does not prevent it being subsequently contended that no such permission was necessary on account of existing use rights. Where an EUC exists for a use which has been found to be immune from enforcement and in the event that a grant of planning permission did not create a new planning unit, the landowner would not be precluded from relying on the existing use rights attaching to the site.
56. The appellant relies upon *Breckland*, which concerned an application for a LDC under section 192(1)(a) of the Act for the "proposed use or development for the siting of mobile homes for permanent residential occupation".
57. There are similarities with the case before me. The 1971 EUC confirmed use of land for '*general recreation, camping, touring caravanning and picnicking*' was immune from enforcement and I take each comma between the words '*recreation, camping, touring caravanning*' to be a shortened way of writing '*and*'. Applying the approach established in *Breckland*, it would therefore be possible to use the site for each of the component uses, either simultaneously or in isolation.
58. It was the Secretary of State's position that the uses to which the EUC relate are properly to be regarded "as concurrent uses for each of the four different purposes specified in the certificate, those uses together constituting a mixed use of the land". However, I take the view that the previous Inspector's approach in following the Secretary of State's treatment of the 1971 EUC as a mixed use is, as a consequence of the changes to jurisprudence, inconsistent with the approach in *Breckland*. The judgment in *Breckland* leads me to the view that the 1971 EUC can be considered as a single use.
59. It was held in *Broxbourne BC v SSE [1979] JPL 308* that an EUC shall be conclusive for the purposes of an enforcement appeal. *Broxbourne* was subsequently applied in *Breckland* where it was held that the interpretive principles applicable to planning permissions apply to LDCs. The Inspector was entitled to find the scope of a 2006 LDC clear and unambiguous on its face, meaning that extrinsic evidence was irrelevant. The lawfulness of the use was '*conclusively presumed*' as certified and the local planning authority could not import limitations into the LDC.
60. However, whereas the term "*caravan*" was unlimited in *Breckland*, in the appeal case the term used is '*caravanning*', and it is qualified within the 1971

EUC by the inclusion of the word 'touring'. No other limit as to where the use could take place within the site, or the intensity of the use is stated within the 1971 EUC.

61. The EUC certified that the use of the site for 'touring caravanning' was immune from enforcement action. The question of whether the use of the site for the stationing of caravans for the purposes of human habitation throughout the year would constitute a material change of use from the certified use would be a matter of fact and degree.

The 1983 Enforcement Appeal Decision

62. In addition to granting the 1983 Permission, the 1983 Appeal Decision was also concerned with whether an enforcement notice issued by the Council should be upheld. The allegation within the notice was a '*change of use of an area comprising approximately 30.2 acres divided into 531 plots as a caravan site for the stationing of caravans and other structures for purposes of human habitation*'. It is not disputed that the area enforced against includes the current appeal site.
63. The Secretary of State found, in applying the principle established in *Broxbourne* that one must not seek to go behind a certificate of established use, that the 1971 EUC did not state any limit upon the scale or intensity of the use for touring caravanning. In that instance, the relevant issue was whether the difference between the then-present mode of use of the land as a caravan site was materially different to the use inferred from "touring caravanning".
64. In concluding that the use being enforced against was not so different to that described in the 1971 EUC the notice was quashed. In doing so, the Secretary of State concluded that there was no material change of use between the established and the then-existing uses, noting that the only distinction between these uses was that the established use involved owners bring their caravans to the site only for a few days or weeks at a time whereas the use that was enforced against involved many owners keeping their caravans stationed on the land for lengthy periods or permanently, though occupying them only at intervals or for short periods.
65. Section 88 of the 1971 Act provides that in respect of an appeal against an enforcement notice under ground (b) '*that matters alleged in the notice do not constitute a breach of planning control*', the statutory power available to a decision maker pursuant to s.88(1)(b) is only engaged in the precise terms set out in the 1971 Act; that the matters specifically alleged in the notice, not some extension or further qualification of the wording contained therein.
66. Whilst the allegation in the notice was '*use as a caravan site for the stationing of caravans and other structures for purposes of human habitation*' the Secretary of State, and the Inspector, were considering, based upon the evidence, a use that did not specifically involve use "*throughout the year*". Although it would have been open to the Secretary of State to have corrected the allegation, it is difficult to see how the allegation could have been worded any differently to capture what was happening on the ground.
67. While it would have been open to the Secretary of State to determine any purpose for which the land may, in the circumstances obtaining at the time of

the determination, be lawfully used having regard to any past use thereof and to any planning permission relating to the land, as set out under section 88(5)(b) of the 1971 Act, the Secretary of State simply directed that the notice be quashed.

The subsequent Planning Permissions

68. Where such a use has been declared to be lawful, subsequent planning permissions granted for the appeal site should be considered as to whether they grant anything different to that already established lawful use, that is, whether they provide for any use rights or development for which a permission or grant does not already exist.
69. If permission, or a lawful use certificate already exists which provides for such development then there can be no further act of development that could attract a grant of planning permission where the same or lesser development is undertaken. Any further planning permissions that are granted for the same or lesser development, and any conditions contained therein, have no effect and can be disregarded, as confirmed in the case of *Newbury*.
70. The 1983 Permission was for a single use across the whole caravan site for holiday purposes. Since I have found that the 1971 EUC is capable of being for a single use, it therefore follows that the development granted by the 1983 Permission was already provided for by the 1971 EUC and there was no further act of development; the 1971 EUC already provided for the lesser development that was proposed as part of that application. Consequently, any condition contained within the 1983 Permission has no effect. The 1983 Permission was therefore unnecessary, and it follows that the 1986 Permission and subsequent variations were also not necessary for so long as the use of the appeal site did not amount to a material change of use.

Materiality

71. In determining the 1983 Enforcement Appeal the Secretary of State was concerned with whether the alleged use as a 'caravan site for the stationing of caravans and other structures for purposes of human habitation' was materially different from the 'touring caravanning' use described in the 1971 EUC. The Secretary of State explained what they considered to be the meaning of the words "touring caravanning" as implying moving about with a caravan which is used for sleeping accommodation at night and that it implied a limited size of trailer caravan, which can be towed behind a vehicle on a highway, or a motor caravan.
72. The Secretary of State opines that it would not include the stationing of a caravan on the same place throughout the year or even for a long stay, beyond a short holiday of 2 or 3 weeks. It was noted that, at that time, the evidence pointed to some owners of plots on the enforcement site using their land for touring caravanning and removing their caravans from the site after each short stay. However, other persons were noted to be leaving their caravans on their plots during the summer season and many others were keeping them on their land throughout the year, albeit these persons were occupying them at intervals for recreation and for short periods of time.
73. Whilst the 1983 enforcement appeal succeeded on the basis that the matter alleged, namely "*use as a caravan site for the stationing of caravans and other*

structures for purposes of human habitation” did not constitute a breach of planning control, the alleged use did not specifically involve use as such “throughout the year”.

74. The use for “touring caravanning” under the 1971 EUC would involve stationing of caravans for human habitation, even if only for short or limited periods. A likely characteristic of a ‘touring caravanning’ use would be that caravans were placed on the site for a temporary period, before being taken off-site to some other place. Whether static or touring caravans, the caravans would therefore likely be occupied at intervals and for limited periods of time. It is how the caravans are occupied, rather than the design of the caravan itself, which is likely to affect the character of the use.
75. In determining the 1983 enforcement appeal, the Secretary of State was considering a single use where individuals occupy caravans for limited periods, rather than all year round. To my mind, there are material differences between the character of use associated with ‘touring caravanning’ and the proposed use. The issue of whether a material change of use has occurred is a matter for the decision maker as a matter of fact and degree depending on the particular circumstances of the case.
76. Individuals who use the site for temporary periods are likely to follow a seasonal pattern of use and in my view, they are less likely to use the site for caravanning during the winter months when the weather is inclement and thus less attractive to visitors to the site. Year round occupation of the site would inevitably lead to significant activity on the site in the form of comings and goings to the site at times when caravans would otherwise be vacant.
77. In addition, individuals staying for short periods of time are more likely to travel together in one vehicle, whereas year-round use is likely to encourage permanent occupation of the plots, and those individuals are more likely to own more than one vehicle and have to ‘come and go’ from the site more often to access employment and services such as education.
78. The number of occupants at the appeal site during the winter months could also increase activity in the vicinity of protected sites, the Blackwater Estuary Site of Special Scientific Interest, the Special Protection Area and internationally important wetland (Ramsar site), including the use of the public footpath which runs along the estuary wall. Such activity could disturb over-wintering birds at those nearby protected sites. However, without further information, it is impossible to gauge how the prolonged use of the site might impact upon materiality from off-site ecological effects.
79. It is for the appellant to prove on the balance of probability that the proposed *“use of the land for the stationing of static caravans for the purposes of human habitation throughout the year”* is not materially different from the use of the land for *“general recreation, camping, touring caravanning and picnicking”* covered by the 1971 EUC. The burden of proof rests firmly on the appellant and in this instance, whilst I have concluded that the starting point in this case would be different, having had regard to *Breckland*, the appellant has not demonstrated, on the balance of probabilities, that that the proposed *“use of the land for the stationing of static caravans for the purposes of human habitation throughout the year”* is not materially different from the use of the land for *“general recreation, camping, touring caravanning and picnicking”* covered by the 1971 EUC.

Statutory declarations

80. The appellant has submitted a number of statutory declarations as part of their evidence, and it is their case that these demonstrate the nature of use of the site throughout November to March and this shows that the site has operated in accordance with the 1971 EUC rather than in accordance with any planning permission.
81. The majority of the documents are provided by owners of individual plots at the site, however, since none of these have been properly executed as a sworn written statement of fact as they are absent of oath having been sworn by the person making it, this therefore limits the weight to be attributed to their content and as such I have treated each one as a signed statement to which no sanctions apply. Since the evidence of the former site manager is contained within a formal statement to which the provisions of the Statutory Declarations Act 1835 apply, I have treated this as sworn first-hand evidence. None of the plot owners nor the former manager attended the inquiry to provide evidence.
82. The statements of the individual plot owners set out the period of time during which each person has owned their plot and provides a brief account as to how they have personally occupied their plot between October and April in the following year. Some individuals state they have stayed in their caravan during November and March. Other suggest they have occupied their caravan during the period November through to March. Whilst a number of individuals state they have stayed in their caravan "throughout the whole year", a greater number suggest their occupation over that period was "some years" or "most years" since arriving at the park. However, there is little detailed evidence to explain the frequency and duration of any such periods of occupation and, noting that each plot owner has referred to having a 'second address', this adds uncertainty as to the extent of year round residential occupation of the site and overall I find the evidence to be ambiguous and vague.
83. Whilst the appeal was submitted under section 192 of the Act for a proposed use of the site, an Inspector has the power to determine an appeal under section 191 if the appellant is in reality seeking to ascertain whether an existing use is lawful. However, to do so, the evidence would need to be sufficient for the lawfulness of the use as existing to be properly considered. Since I have concluded that there is ambiguity in the evidence provided by the plot owners and the former manager, it has not been necessary to consider the appeal with regard to section 191 of the 1990 Act.

Conclusion

84. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of land for the stationing of static caravans for the purposes of human habitation throughout the year is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

E Brownless

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd Counsel

Mr Nick Laister Managing Director of Laister Planning

Mr Peter Griffiths

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Fraser Counsel

Ms Kathryn Matthews Principal Planning Officer

INTERESTED PARTIES:

Mr Peter Lyman Local resident

DOCUMENTS

1. Appellant's opening statement
2. Council's Opening Statement
3. Closing submissions of the appellant
4. Closing submissions of the Council
5. Certificate of Incorporation on change of name