The Planning Inspectorate

Appeal Decision

Site visit made on 5 November 2018

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 January 2019

Appeal Ref: APP/C1435/X/17/3190604
Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

- 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 Mr N Brabon against the decision of Wealden District Council.
- The application Ref WD/2017/0175/LDE, dated 23 January 2017, was refused by notice dated 20 June 2017.
- The application was made under section 191(1)(a) and (c) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought was initially described as "All year round caravan site use" but revised on amended application form dated 31 May 2017 to "All year round caravan site use on the basis of non-compliance with Condition 3 of planning permission WD/79/3077/X for the relevant 10 year period".

Decision

1. 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.

Preliminary matter

2. No representative from the Council attended the site visit. I rang the Council and spoke to an officer who confirmed that the Council was content for the visit to proceed despite no Council presence. The Appellant allowed me to inspect the property. No discussion as to the merits of the appeal took place. I am satisfied that I have seen all that I need to proceed to a decision and the Council has raised no objection to my doing so.

Reasons

3. For the purposes of this appeal, Castle View Caravan Site is subdivided into two parts as in a LDC issued on 23 December 2010. That drew a distinction between the western portion of the site, said to have been used as a caravan park continuously for a 10 year period with no intervening use preceding the date of the application; and the eastern portion, certified for use as a caravan park between 1 March and 30 November in any calendar year continuously for a 10 year period with no intervening use preceding the date of the application. The application the subject of this appeal seeks a LDC for all year round caravan site use of the eastern portion.

4. Planning permission WD/79/3077/X for the entire site, granted on 11 December 1979, was for development described as "*Use of land and buildings as caravan and camping site as existing with extended dates of*

1 March to 30 November, Castle View Caravan Site, Eastbourne Road, Pevensey Bay." Whilst that description suggests that the permission is limited to the period from 1 March to 30 November each year, it is well established that a restriction, in this case to a limited period each year, cannot be implied by reference to that period in the description of the development[1]. A condition is needed to regulate the use.

5. The permission did include a condition, the second in the permission (although numbered 3), which stated "*This permission shall not authorise the use of the land as a caravan site except during the period from 1st March to the 30th November inclusive each year*."

6. This condition is poorly worded in that it does not impose a requirement or limitation. It does not affect (or even appear to seek to affect) the terms upon which permission was granted, but rather to clarify them. It does not, for example state the land "*shall not be used as a caravan site other than during the period …*" or that "*the use shall cease*…". Rather it appears to be a bland explanatory statement in the nature of an informative. A condition should be clearly expressed and imposed. This one isn't in that it says nothing more than that the permission does not authorise the use of land during the period 30 November through to 1 March. It does not, therefore, take away any right through the operation of the law to continue the use outside of the period specified in the permission.

7. I have already noted the confirmation (from the 2010 LDC issued by the Council) that there has been no intervening use. That in itself indicates that the lawful use of the site as a caravan park did not cease, since from the implementation of the planning permission granted for the use, whereby the use became lawful, no other use took its place from 30 November to 1 March the following year.

8. In the absence of a condition requiring the use to cease for the specified period, its continuation from 30 November through to the following March would not amount to a breach of planning control since:

   a) the continuation of the use beyond 30 November would not amount to a further material change of use from that granted by the planning permission so no development would be involved (the 2010 LDC, certifying use as a caravan park between 1 March and 30 November each year, confirms that there has been no intervening use, such that a further planning permission for material change of use would be required); and

   b) there would have been no breach of any condition expressly requiring the use to cease.

9. On these grounds alone I conclude that the existing use as an all year round caravan site is lawful.

10. Nonetheless, if that conclusion is wrong and the condition can be given sensible meaning when construed objectively in the context of the planning permission as a whole so as to prevent "use as a caravan site" from the end of November through to the beginning of March, I will go on to consider whether that exclusion has been breached in excess of 10 years so as to have become lawful.

[1] I'm Your Man v SSE QBD [1999] 77 P. & C. R. 251

11. In this respect, all the supporting administrative, service/amenity and store/maintenance buildings for the entirety of the Castle View Caravan Site are situated on the eastern portion of the property, the subject of this appeal. In addition internal access roads, caravan hardstandings and service hook ups are also constant features on the land. With all these physical features in place, a permanent change in the character of the land to that of a caravan site has occurred. Even if unoccupied, the caravan site would remain in the same way that a vacant dwellinghouse would remain as a dwellinghouse – the use would not have ceased.

12. The Council has sought information from the Appellant about which particular pitches have been occupied during the disputed period but in my view that is misconceived. In this respect it seems to me that the Council has conflated "use" with "occupation"[2]. The condition, even if given sensible meaning, does not simply require occupation of the caravans to cease or the site to be vacated but rather refers to use. Whilst occupation of caravans would not be possible if the use had been discontinued, lack of occupation of caravans or vacation of the site does not necessarily lead to the conclusion that the use has ceased.

13. Therefore, if the condition can be read as requiring the use to cease, then as a matter of fact and degree I find that the condition has not been complied with. In my view, even if no caravans had been occupied and no support buildings used from the end of November to March, that would not be sufficient to bring the use of the site to an end. The character of the land with its permanent infrastructure to support the use would remain that of a caravan site. Its use as such would not have been discontinued even if it had been vacated for part of each year.

14. In this case, however, the evidence is that the site has not been vacated for any period for well in excess of ten years. All the administrative, service/amenity and store/maintenance buildings on the appeal site have been in use year round – at the very least to support occupiers of the western portion of the property even if not for occupiers of the eastern part, the appeal site. That, in itself, is sufficient to show that the use did not cease. Furthermore, evidence provided by the Appellant[3] demonstrates that there has been some occupation of caravans on the appeal site during the period from the end of November to the following March for in excess of ten years. I am aware that the caravan site licences include restriction on occupation but the evidence is that those restrictions have not been adhered to. No evidence to the contrary has been provided.

15. A requirement that specific caravans which have been occupied during the winter months should be identified is misguided. If the site has continued to operate throughout the disputed months, with the support buildings in use and some caravans occupied, then the use of the land as a caravan site (as might be said to be required to cease by the condition) has not ceased regardless of which or how many caravans have been occupied. The current case can be distinguished from *The Queen on the application of St Anselm Development Company Limited v First Secretary of State* [2003] EWHC 1592 (Admin) to which the Council makes reference. That case concerned the retention of parking on a site for a specific purpose and the individual spaces were

[2] See 2nd bullet and final paragraph of Council's letter dated 26 September 2018
[3] Including statements from the site owner, site manager and customers who have stayed during the winter months, booking records and water usage which is metered

severable. It did not relate to a requirement to cease the use of an entire planning unit.

16. Neither do I accept that the site has a mixed use. The lawful use of the land is as a caravan site[4] which by definition means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed. There is nothing to restrict the type of occupier or length of stay other than the disputed condition. Further, it is not unusual on caravan sites for there to be fluctuation in the number of caravans present and in occupation.

17. On the basis that the condition can be given sensible meaning as requiring the use to cease between the end of November and the beginning of the following March, I conclude as a matter of fact and degree and on the balance of probability that the condition has been breached for in excess of ten years such that no enforcement action may be taken[5]. Given that there is no contravention of any enforcement notice in force, the requirements of s191(2) of the Act are met and the use is lawful.

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an all year round caravan site use was not well-founded and that the appeal should succeed. I find no reason to include in the description on the LDC the additional wording as set out on the later amended application form as it does not describe the existing use applied for but rather goes to the reasoning as to why a LDC should be issued. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

[4] See S336(1) of the Act
[5] S171B(3)

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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 23 January 2017 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:

Planning permission was granted for the use in 1979. It has continued since that time with no material change. No condition requires the use to cease during certain months of the year but even if the condition attached to the 1979 planning permission could be interpreted as imposing such a requirement it has been breached for in excess of 10 years such that enforcement action cannot be taken.

Signed

B M Campbell
Inspector

Date: 8 January 2019
Reference: APP/C1435/X/17/3190604

First Schedule

All year round caravan site use

Second Schedule

Land at Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

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

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 January 2019

by B M Campbell BA(Hons) MRTPI

Land at Castle View Caravan Site, Eastbourne Road, Pevensey Bay BN24 6DT

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Do not scale

