The Planning Inspectorate

Appeal Decision

Site visit made on 24 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Appeal Ref: APP/A2525/X/20/3249073
Woodlands Caravan Park, Jeklis Bank, Moulton Eaugate, Spalding PE12 0SX

- 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 Tom Smith against the decision of South Holland District Council.
- The application Ref H23-1154-19, dated 11 November 2019, was refused by notice dated 24 January 2020.
- 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 as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans - resubmission of H23-0736-19.

Summary Decision: the appeal is allowed and a certificate of lawful use is granted in the terms set out in the Formal Decision below

Application for costs

1. An application for costs was made by Mr Tom Smith against South Holland District Council. This application is the subject of a separate Decision.

Background

2. The planning history of the site is fundamental to both the procedural and substantive elements of this appeal. It is therefore helpful to set out the relevant planning history briefly at the outset.

3. The background to this appeal is a planning permission granted by the Council in September 1981 (Council Ref: H23/628/81/1271 – hereafter "the 1981 permission"). That permission granted planning permission for:

   Use of the land for siting of one residential caravan and three holiday caravans and installation of septic tank.

4. The permission was subject to two conditions, which stated:

   Condition 1. *The occupancy of the residential caravan hereby permitted shall at all times be restricted to the applicant.*

   Condition 2. Occupancy of the three holiday caravans hereby permitted shall be restricted to the period commencing 1 April and ending 31 October in any one year.

5. There is no dispute that the permission was implemented or that the conditions imposed upon that permission took effect.

6. The position has moved on somewhat since the 1981 permission was granted. Firstly, the applicant for the 1981 permission (Miss I M Mimmack) passed away in or around August 2013. Condition 1 of the 1981 permission then prevented occupation the caravan that she occupied (which I understand to have been caravan No 2) by any other person.

7. In November 2016, the Council granted a Lawful Use Certificate for the use of caravans 1, 3 and 4 for residential occupation (Council Ref: H23-0891-16). This was followed in October 2018 by the grant of a Lawful Use Certificate for the use of caravan on site as a permanent dwelling (Council Ref: H23-0552-18). The latter related to an additional caravan to the original 4 caravans to be used as permanent dwellings.

8. The position as of October 2018 was, therefore, that five caravans could be lawfully stationed on the land, four of which could be occupied by anyone on a permanent residential basis. The caravan previously occupied by Miss I M Mimmack can lawfully remain on the site, but occupation of that caravan remained restricted by Condition 1 imposed upon the 1981 permission.

9. In October 2019, the Council refused to grant a Lawful Use Certificate for the use of land as residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans (Council Ref: H23-0736-19). I have not been provided with a full copy of that application but, as I understand it, the application included all the caravans then on site, including that previously occupied by Miss I M Mimmack.

Procedural matters

10. The description of the use for which a certificate of lawful use or development is sought set out in the header above is taken from Council's formal Decision Notice, as I am required to do. However, the application as submitted was for a proposed use of the appeal site for:

    Use of land as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans (excepting the caravan approved specifically for the occupation of I M Mimmack only which is proposed to be removed off site and thereafter not reinstated).

11. Having regard to the planning history set out above, I do not consider the description of development as amended by the Council to be an accurate one. This is based on two facts that arise out of that planning history.

12. As indicated above, the applicant for the 1981 permission passed away in 2013. The obvious corollary is that Condition 1 of the 1981 permission can no longer be complied with. However, the application clearly states that the caravan previously occupied by Miss I M Mimmack is specifically excluded from the use for which a certificate of lawful use or development is sought. That is a consideration fundamental to the lawfulness or otherwise of the use for which the certificate of lawful use or development is now sought. Indeed, following the refusal of application Ref: H23-0736-19, no doubt this was the reason why the caravan previously occupied by Miss I M Mimmack was specifically excluded from the application. It follows that the appellant would be prejudiced if the

appeal proceeded on the basis of the description of the use as amended by the Council.

13. Secondly, it further follows that the application subject to this appeal is not a resubmission of the previous application (Council Ref: H23-0736-19). It is materially different, in that is specifically excludes the caravan previously occupied by Miss I M Mimmack.

14. For these reasons, I will determine this appeal on the basis of the description of the use set out in the application as originally submitted. This is reflected in the Formal Decision below.

Reasons

15. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

16. It is settled case law that there is no express or implied power for a local planning authority or the Secretary of State to impose limitations on a planning permission granted pursuant to an application. Such limitations are not capable of enforcement under the Act. The lead case in this respect is *I'm Your Man Limited v Secretary of State for the Environment & North Somerset DC* [1999] 4 PLR 017, in which it was held that, in the absence of a specific condition, the planning permission was a permanent one and not restricted to a temporary period. The judgment in *I'm Your Man* turned on whether there was sufficient difference in character between the temporary use and a permanent use.

17. Applying the principle established in *I'm Your Man* to the development proposed in this case, the starting point is the description of the development granted by the 1981 permission. It is convenient to repeat it here:

Use of the land for siting of one residential caravan and three holiday caravans and installation of septic tank

18. The 1981 permission was for a total of four caravans, one of which was for permanent residential use. The subsequent granting of Lawful Use Certificates meant that, by the date on the application now subject to the appeal was submitted, the lawful use of the land was for five caravans, four of which could be occupied on a permanent residential basis. The latter then becomes the baseline against which the principle in *I'm Your Man* should be assessed.

19. At the time of my site visit, there was a total of six caravans on the site, comprising five static caravans and one tourer. The latter, as I understand it, is used for storage. The caravans were spread around the perimeter of the

site, separated by areas of planting. The majority of the land that is not occupied by caravans is hard surface used for vehicle parking and turning. The character is overtly that of a caravan site.

20. The addition of further caravans would not materially alter that character. The LDC posits an unlimited number of caravans. The addition of further caravans would reduce the spacing between the caravans. The amount of planting would be reduced, as would the area of hardstanding. The appeal site is relatively small in area and consequently there would come a point when the addition of further caravans would become impractical. But, as a matter of fact and degree, the character of the use would not change before that point was reached. It would retain the character of a caravan site. No material change of use would take place.

21. I am mindful that the description of development for the 1981 permission refers to use of three of caravans for holiday use. In *Cotswold Grange Country Park LLP* [2014] EWHC 1138 (Admin), the High Court held that the description of development on a planning permission is a different thing from a condition restricting the numbers of caravans on the site. The High Court held that a condition restricting the caravans for holiday purposes only is simply not a condition restricting the number of caravans. It was held that any limitation found merely in the description of the development is insufficient to amount to a limitation in law.

22. It follows from *Cotswold Grange Country Park LLP* that condition 2 imposed upon the 1981 to restrict three of the caravans for holiday use is not, and never was, sufficient to restrict the number of caravans on the appeal site. In any event, that condition has now been superseded by the LDC granted in November 2016, which found that the use of caravans 1, 3 and 4 for residential occupation was lawful.

23. The only restriction that remains on the 1981 permission is therefore condition 1: that the occupancy of the residential caravan shall at all times be restricted to the (then) applicant, Mrs I M Mimmack. The LDC specifically excludes that caravan. It follows that, with that caravan removed, there is no reason why the site cannot be used as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans.

Conclusion

24. 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 the use of land as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans (excepting the caravan approved specifically for the occupation of I M Mimmack only which is proposed to be removed off site and thereafter not reinstated) at Woodlands Caravan Park, Jeklis Bank, Moulton Eaugate, Spalding PE12 0SX was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Paul Freer
INSPECTOR

The Planning Inspectorate

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 11 November 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and [edged] [and] [hatched] [cross-hatched] in black 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:

The proposed use is not restricted by any extant condition imposed upon planning permission H23/628/81/1271 dated 8 September 1981, and would not constitute a material change of use of the land that would require planning permission for the purposes of section 55(1) of the Town and Country Planning Act 1990.

Signed

Paul Freer
INSPECTOR

Date: 06 August 2021
Reference: APP/A2525/X/20/3249073

First Schedule

Use of land as a residential caravan site without limitation on caravan unit numbers, layout or occupancy of the caravans (excepting the caravan approved specifically for the occupation of I M Mimmack only which is proposed to be removed off site and thereafter not reinstated)

Second Schedule

Land at Woodlands Caravan Park, Jeklis Bank, Moulton Eaugate, Spalding PE12 0SX

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 06 August 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Woodlands Caravan Park, Jeklis Bank, Moulton Eaugate, Spalding PE12 0SX

Reference: APP/A2525/X/20/3249073

Scale: Not to scale

