Appeal Decision

Site visit made on 4 November 2008

by Alan Upward **BA(Hons) MCD MRTPI**

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

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Decision date:
12 November 2008

Appeal Ref: APP/Q9495/X/08/2069962
Fell View Park, Gosforth, Seascale, CA20 1HY

- 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 Michael Williams for the Berkeley Leisure Group Ltd against the decision of the Lake District National Park Authority [LDNPA].
- The application Ref 7/2007/4095, dated 2 November 2007, was refused by notice dated 21 December 2007.
- 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 siting of 7 residential mobile homes together with associated hardstandings and internal road**.

Formal Decision: I dismiss the appeal

The appeal site and LDC development

1. The appeal relates to the use of 2 open areas located centrally within a residential mobile home park currently licensed for a maximum of 78 residential caravans. These areas are more or less completely surrounded by the plots of existing residential units, other than for narrow gaps providing for access. They are grassed with a limited amount of additional tree and shrub planting. Most of their perimeters are lined by fences and hedges defining gardens for existing mobile homes. A plan submitted with the LDC application showed the siting of 3 mobile homes on the western of the 2 parcels and 4 on the eastern plot. A roadway from the existing estate road would lead into the western site, although there would be pedestrian access only to the eastern land. The plan also showed details of parking spaces alongside some of the units and positions for small sheds. A notation indicated that mobile homes would be sited in strict accordance with the Model Standards 1989.

The Appellant's arguments for the grant of an LDC

2. The Appellants argued that when the original application for the mobile home park was granted on appeal in 1976, it was on the basis of the use of land with no restriction on the number of mobile homes. The siting of the additional 7 mobile homes would not represent a change of use, and could be undertaken without the need for a further planning permission.

3. The additional works specified in the LDC application would be required to accord with the provisions of the site licence granted under the 1960 Caravan Sites Act, and would therefore be development permitted by Part 5 Class B of the Schedule attached to the GPDO. Points about the availability of these GPDO rights in relation to the terms of the site licence, as now made in their appeal representations, were not raised by LDNPA in their consideration of the application. LDNPA had not to the knowledge of the Appellants ever stated that planning permission was necessary for any of the developments which had taken place or were still taking place at Fell View Caravan Park. These were similar to those subject to this appeal. It had been found necessary to provide concrete hardstandings on this site given the slope and nature of the ground so as to ensure that the mobile homes had an appropriate base. Planning applications had not been required previously to cover such works where they had been carried out at Fell View.

4. The mobile homes would comply with the definition of a caravan within the amended 1960 Caravan Sites Act. Earthworks to secure a level base would be small, and not separately amount to development as engineering operations.

Appraisal

5. LDNPA did not dispute that the addition of a further 7 units within the site currently licensed for up to 78 mobile homes would not be a material change of use of the Caravan Park having regard to the terms of the 1976 planning permission which did not seek to specify maximum numbers or limit them by condition within a defined site permitted for the use. This must be correct. Their 2 reasons for refusal were that the proposed development would be in breach of landscaping conditions imposed on the 1976 appeal permission, and that the development was operational development requiring planning permission. In the second reason the focus was on their conclusion that the siting of mobile homes on this site amounted to operational development rather than a material change of use. In their appeal representations they elaborated upon the need for planning permission for various additional works identified on plans or implied by the Appellant company's general practices with regard to Fell View.

6. The LDC application, as submitted, referred only to "associated hardstandings" and "internal road" by way of additional matters. Certification as lawful was not expressly being sought in respect of other details, such as sheds and parking spaces, shown on the plans accompanying the application. I shall restrict my consideration to the matters expressly identified by the application. It may have been reasonable to infer that general working practices adopted by the Appellants as site owners and managers, and observed by LDNPA officers, would be likely to be deployed on the provision of the 7 additional units. Unless inherent to the use and works for which certification is sought, such matters would not bear directly on the question being considered.

7. "Associated hardstandings" are included in the appeal, and reliance is placed on GPDO rights. Concrete hardstandings spanning 13.750m x 6.125m on 5 of the 7 plots (and somewhat smaller on the other 2) are of a nature and scale to amount to operational development. Part 5 Class B of the Second Schedule to the 1995 GPDO specifies as permitted development:

   "B. Development required by the conditions of a site licence for the time being in force under the 1960 Act."

   In many respects the Fell View Site Licence schedule of conditions submitted by the Appellants follows the guidance in *Model Standards 1989: Permanent Residential Mobile Home Sites.* This latter document states that every caravan should stand on a concrete hard-standing which should extend over the whole area occupied by the caravan placed on it. In relation to hardstandings the schedule of conditions states at "*5.1: Hard standings may be dispersed with, if the caravans are situated on ground which is firm and safe in poor weather conditions.*". This is the only reference to the matter in the document supplied to me. I consider it reasonable to assume that use of the word "dispersed" is a typographical error, and that the intended word was "dispensed". The Appellants' indication that it had been found necessary to provide concrete hardstandings at this site "given the slope and nature of the ground" provides only a general statement of their policy for the site, and does not demonstrate in detail the reasons for their wishes in respect of the 7 extra units. Although parts of the site had a degree of slope, it would not have been self-evident that caravans could not be installed safely without the extent of base being proposed.

8. Applying the words "dispensed with" to the site licence condition, I do not consider that this imposes a requirement for the creation of concrete hard standings for each mobile home. It simply states permissively circumstances where hard standings need not be used, but does not set out a licence requirement. It could have used a form of words similar to that employed in the Model Standards, but did not do so. I do not consider that a requirement could be implied for circumstances outside those referred to in 5.1. Even if it could, it could only follow upon an assessment of the specific circumstances of each caravan plot. Rights under Part 5 Class B apply to development "required" by a site licence not "mentioned" in it. My conclusion is that the "associated hardstandings" would not in the circumstances of this case be development permitted by Part 5 Class B. They would not be lawful in the absence of a planning permission.

9. The Appellants' comments that they had hitherto not been required to submit for planning permission in respect of such works by this planning authority, and that as experienced operators of mobile home parks around the UK they had not been requested to submit for development within an existing park in this kind of situation do not affect my interpretation of the circumstances of this case. The associated hardstandings are clearly seen as integral to the

LDC proposal for the use of the land, and the proposed development, as applied for, would not therefore be lawful.

10. My interpretation of the site licence in relation to the "internal road" is different. The road , as shown on the plan for the western plot, would be an engineering operation amounting to development. The condition at 4.1 includes the words "*Roads of suitable material should be provided so that no caravan is more than 50 metres from a road*". This expressly imposes a requirement which is relevant to the development of the plots involved. That development would be permitted by Part 5 Class B.

11. The representations covered a number of additional matters. It was argued by LDNPA that earthworks on the grassed areas to allow the installation of the units would in their own right amount to development as engineering operations. As I saw the land, the eastern plot appeared to be relatively flat. There was some fall across the western site, but I would not have expected that earthworks to correct for the degree of level change involved over individual plots would have been sufficient, as a matter of fact and degree, to have constituted operational development. The cross-sectional drawing submitted by the Appellants was not a complete representation of the position, but conformed with my impression that the amount of 'cut and fill' required would be likely to be limited. This matter would not justify rejection of the appeal.

12. As to LDNPA's argument that the onus of proof fell on the Appellants to show that the mobile homes would not be building operations in this case, the application was made on the basis that the units would conform fully with the definition of a caravan as set out in the amended 1960 Act. That must be the basis on which I consider the appeal. LDNPA drew on what they had seen by way of works of installation at other plots at Fell View – such matters as the method of support for the structures when placed on the land, the addition of brick plinth bases, terraces, steps and other permanent additions - which gave the structures a degree of permanence which in their view made the installation building operations. These matters were not expressly the subject of the proposal. Whether works carried out to mobile home units had this effect would be a matter for consideration in the specific circumstances of an individual case. If 7 additional residential units were installed on the basis shown in the appeal, and they were found not to constitute caravans by reference to the various requirements in the amended 1960 Act and more general tests for operational development, they would not accord with any CLOPUD granted in response to this appeal.

13. I do not consider that I am in a position to apply a general rule to future proposals in the light of what I saw elsewhere within the park. LDNPA did not dispute the Appellants' claim that they had thus far not required applications for planning permission arising from such works. Again, my conclusion is that this matter would not justify rejection of the appeal.

14. The first of the 3 conditions attached to the 1976 planning permission granted on appeal required that the site be landscaped and trees planted in accordance with a scheme to be submitted within a timetable specified in condition (ii) and re-planting within 2 years set out in condition (iii). It might be implied that such landscaping be kept in perpetuity, but that was not specified by the format adopted. Neither party was able to identify whether a landscaping scheme had ever been submitted, approved or implemented. LDNPA's records provided no information whatsoever, and there was no drawing showing planting works on the site.

15. I was asked by LDNPA to conclude that it would have been "unthinkable" for the development to have proceeded without prior approval of a landscaping scheme, and that a scheme would have been bound to include proposals for the use and treatment of the 2 parcels now subject to the LDC appeal. Both of these steps stretch beyond a reasonable basis the onus under S195 on an Appellant to establish facts. If a scheme had been processed, and implemented, it would have been reasonable to expect the local planning authority to have some form of record of it, or its existence, even after more than 30 years. If the conditions had been breached, that breach would itself have become immune from enforcement action by the date of this LDC application. There would moreover be no basis upon which to conclude, on the balance of probability, that any such landscaping scheme would have provided protection for the 2 plots now subject to appeal. Apart from the absence of a form of words requiring retention of the planting (and presumably grassing) in perpetuity, it was unclear from available documents that these specific parcels were intended as open areas at that time. A plan of the site at a date contemporary with the appeal showed a rather different layout of caravan plots and siting of open areas.

16. This matter would also not provide a basis upon which to deny the lawfulness of the current proposal. However, for the reasons set out earlier in relation to the failure to meet the requirements of GPDO Class 5 Part B as permitted development, my overall conclusion is that LDNPA's refusal to grant an LDC was well founded, and the appeal will fail.

Alan Upward

INSPECTOR