Appeal Decision

Inquiry held on 25 November 2009
Site visit held on 26 November 2009

by Derek Thew DipGS MRICS

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

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Decision date:
4 January 2010

Appeal Ref: APP/J3205/X/09/2099134
The Smithy, Hampton Loade, Bridgnorth, WV15 6HD

- 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 Nino Lee against the decision of Bridgnorth District Council (now Shropshire Council).
- The application ref. 08/0627, dated 28 August 2008, was refused by notice dated 9 January 2009.
- 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 as a residential caravan site accommodating 6 caravans.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

Reasons

Planning & Licensing Background

2. The application relates to land, with an area of about 0.6ha, situated on the eastern bank of the River Severn and in the hamlet of Hampton Loade. The land currently accommodates a twin-unit residential mobile home which conforms with the statutory definition of a 'caravan' as set out in s.29(1) of the Caravan Sites & Control of Development Act 1960, and section 13(1) and (2) of the 1968 Caravan Sites Act.

3. The siting on land of a caravan used for residential purposes is subject to the provisions of both the 1960 Act and the Town & Country Planning Act 1990. For the purposes of both Acts the expression 'caravan site' 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*" (section 1(4) of the 1960 Act). This definition is applicable to land at 'The Smithy', and so all or part of that land amounts to a caravan site for the purposes of both Acts.

4. Land shall not be used as a caravan site unless the occupier holds a site license issued under Part 1 of the 1960 Act. Furthermore such a license may only be issued by a local authority if a planning permission has previously been granted, under the 1990 Act, for that use of the land. Consequently in detailing the current lawful use of land at 'The Smithy' it is appropriate to have regard to the provisions of both Acts.

5. In relation to the 1990 Act, on 4 June 1957 planning permission (no.13530) was granted for the "*use of land for the stationing of a caravan*" at 'Riverside', Hampton Loade. The plan of the locality submitted with the application does not delineate an application site. Rather that drawing shows, marked freehand, a circle with an 'X' inside and describes this as "*present site of caravan...*". The location of that symbol broadly approximates to the position of the mobile home currently on the land. As such 'Riverside' can be taken to be the name by which 'The Smithy' was formerly known.

6. The 1957 scheme was described in the application form as follows:

> " *No actual development is to take place beyond the placing of one 4-berth caravan on a portion of the land mentioned, to be used:*
>
> *(a) by applicant and his family & (PH Act 1936)*
>
> *(b) seasonally by others at holiday times by license of applicant."*

On the basis of this wording I am satisfied the intention was for the caravan to be used for residential purposes, and I understand that to be the use to which any caravan thereafter sited upon the land has been put.

7. With regard to the 1960 Act, between 1957 and 2007 a total of 14 site licenses were issued by the local authority in respect of land at what is now 'The Smithy'. Thirteen of the licenses have no plan attached to them and identify the land to which they relate only as 'OOS Salop LXV 11.9 Field no.199'. There is no evidence before me to identify the extent of that parcel of land. The fourteenth site license is dated 10 August 2007 and was issued to Mr & Mrs A J Cruxton at 'The Smithy', Hampton Loade. Schedule 1 of the license states that "*only 1 fully serviced park home shall be stationed on the site for residential purposes as permitted in planning permission 13530*". The area of land to which that license relates is defined on a plan. That area includes the site access and the central portion of the current application site. It excludes the walled remains of the former Hampton Loade Ironworks on the southern portion of the application site and the previously overgrown area on the northern portion of the application site.

8. In summary, therefore, 'The Smithy' is a lawful caravan site with planning permission for the siting there of one residential caravan. As to the physical extent of the lawful planning unit to which that use is attached, it was agreed at the inquiry that it should be taken as the land defined on the plan attached to the 2007 site license. On that basis, it is the reduced area of land described in the preceding paragraph, rather than the whole application site, to which I have had regard in determining this appeal. A corrected site plan is accordingly appended to this decision.

Consideration of the Appeal Proposal

9. Section 191(2) of the 1990 Act provides that:

> *For the purposes of this Act 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 any enforcement notice.

Lawfulness is, therefore, determined under the Act on the basis of whether enforcement action may or has been taken in respect of the use or operation in question. Such action can only be taken pursuant to a breach of planning control. Consequently, in order to determine whether increasing the number of caravans at 'The Smithy' from 1 to 6 would be lawful, it is necessary to determine whether enforcement action could be taken if such an increase were to occur, and this requires an assessment of what constitutes a breach of planning control for the purposes of the 1990 Act.

10. Section 171A(1) of the 1990 Act describes a breach of planning control as amounting to either:

(a) carrying out development without the required planning permission: or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted."

11. With regard to sub-section (b), no conditions were attached to the 1957 planning permission. As such, any increase in the number of caravans on the land would not amount to a failure to comply with any condition. Furthermore, in the context of this sub-section, the word '*limitation*' refers only to a time limitation imposed by a development order; and that is not applicable in this case. Consequently, any increase in the number of caravans on the land would not contravene the provisions of section 171A(1)(b) of the 1990 Act.

12. In the light of the above finding, any increase in the number of caravans on the land would only be in breach of planning control if I were to conclude that it amounted to the "*carrying out development without the required planning permission*" (section 171A(1)(a)). For the purposes of the 1990 Act the word "*development*" means either the carrying out of operational works or the making of any material change in the use of land or buildings. In the context of the current appeal I need to consider whether the proposed increase in the number of caravans from 1 to 6 would amount to a material change in the use of the land.

13. I am mindful that the 1957 planning permission was for the use of the land for the stationing of one caravan. That was what the applicant in 1957 wanted and that is what was granted. But it would be wrong to conclude that the proposed increase in numbers would amount to a material change of use of the land just because it differed from what was permitted in 1957. Rather it is necessary to look beyond the wording used in 1957 and to consider what constitutes the making of a material change of use. I draw support for this approach from the judgement in I'm Your Man Ltd-v-Secretary of State for the Environment [1998] 4PLR107.

14. If the number of caravans on the land were to be increased from 1 to 6 then there would be an intensification in the scale at which the use operates. Whether or not intensification can amount to a material change of use was considered by Justice Simon Brown in Lilo Blum-v-Secretary of State for the Environment & the London Borough of Richmond upon Thames Council [1986] JPL 278, as follows:

> *"It is well recognised law that the issue of whether or not there has been a material change of use falls to be considered by reference to the character of the use of the land. It is equally well recognised that intensification is capable of being of such a nature and degree as of itself to affect the definable character of the land and its use and thus give rise to a material change of use. Mere intensification, if it falls short of changing the character of the use, would not constitute a material change of use."*

These words summarise what I regard as the correct approach to intensification. A proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use.

15. The existing mobile home is located fairly centrally within the corrected appeal site and the remainder of the site is laid-out predominantly as a landscaped garden for occupants of the unit. The mobile home is visually prominent, and its residential nature and use are major determinants of the site's overall character and appearance. When planning permission was granted in 1957 it was probably envisaged there would be just one modest caravan on a large open site rather than something markedly more intensive. But what was permitted accords with the legal definition of a caravan site, and what currently exists is a low-key caravan site.

16. If the number of mobile homes or caravans on the land were to be increased from 1 to 6 then I accept the appearance of the site would change. There would be more structures on the land, more hard surfacing, more activity, more traffic and more general paraphernalia of day-to-day living. But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site and, in my view, that is the character it would have with the additional caravans there. The proposed increase would not result in a material change in the nature of the use that is made of the land. It would simply be more of the same use. As a result, I consider the siting of 6 residential caravans on the land would not amount to a material change of use from what was permitted in 1957. I draw support for this view from the comments on the subject of intensification made by Lord Justice Donaldson in Royal Borough of Kensington and Chelsea–v-Mia Carla Ltd [1981] JPL 50.

17. In summary, therefore, I am satisfied that an increase in the number of caravans on the land from 1 to 6 would not contravene any of the provisions of section 171A(1) of the 1990 Act and, as such, would not be in breach of planning control. As set out in paragraph 9 above, a use of land which is not

in breach of planning control and against which no enforcement action can be taken is lawful.

18. In reaching this finding I have given careful consideration to the circumstances in Regina (on the application of John Childs)-v-First Secretary of State & Test Valley Borough Council [2005] EWHC 2368 (Admin). In that case the site had been certified, pursuant to section 191 of the 1990 Act, as a residential caravan site for 4 caravans and the appellant sought a further certificate, pursuant to section 192 of the 1990 Act, to confirm the lawfulness of increasing the number of caravans to 8 or more. This further certificate was refused by the Council and that decision was upheld both on appeal to the Secretary of State and in the High Court. The basis of these decisions was that the proposed increase in the number of caravans would materially change the character of the land from that of a generally little-used *"open field in an undulating landscape, characterised by open agricultural land"* into a developed site *"quite clearly used for the siting of residential caravans"*. This case demonstrates that a proposal to increase the number of caravans on a piece land can be found to constitute a material change of use of that land. But, bearing in mind the nature of the site in the Childs case, it seems to me the circumstances were markedly different from those I have to consider. In paragraph 15 above I have described how the existing mobile home is visually prominent, and how its residential nature and use are already major determinants of the site's character and appearance. That contrasts markedly with the Childs case where the site was essentially an open field. In view of the differences in the nature of the sites, I am satisfied it is reasonable for me to reach a conclusion on the current appeal different from that in the Childs case.

19. I have also had regard to the concerns of neighbours, particularly in relation to the adequacy of the access road that serves the land. Between the River & Rail Public House and the site, vehicular access is by a narrow private lane that runs close to existing residential properties. I accept that this lane is poorly-suited to accommodate vehicular traffic. But I do not regard the additional vehicle movements likely to arise from 5 additional caravans on the appeal site as sufficient to constitute a material change to the character of the permitted use.

20. I have also taken into account the fact that parts of the site are subject to flooding from the River Severn. However, I do not regard that factor as pertinent to my consideration of the character of the use that is made of the land.

Conclusions

21. For the reasons given above I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of use of land at The Smithy, Hampton Loade, Bridgnorth, as a residential caravan site accommodating 6 caravans 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.

Derek Thew - Inspector