The Planning Inspectorate

Appeal Decision

Site visit made on 3 April 2017

by Sandra Prail, MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 27 April 2017

Appeal Ref: APP/U1430/X/16/3164696

Land at Meadowview Park, Crazy Lane, Sedlescombe, Battle, TN33 OQT.

- 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 lawful development certificate (LDC).
- The application Ref RR/2016/1075/0 was dated 18 April 2016. It was refused by Rother District Council by notice dated 14 June 2016.
- The application was made by Mr Keith Dighton under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is siting of static caravans for year round residential use.

Summary of decision: The appeal is allowed and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Application for costs

1. The Appellant has made an application for a full award of costs against the Council and this is the subject of a separate decision.

Preliminary matter

2. For the avoidance of doubt, the planning merits of any future development are not relevant to this appeal for a lawful development certificate (LDC). My decision rests on the facts of the case and relevant planning law and judicial authority. In any application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

Main Issue

3. I consider that the main issue is whether the Council's refusal to grant a lawful development certificate was well-founded.

Reasons

4. The appeal site is part of land known as Meadowview Park which has a detailed planning history. Planning permission (ref 84.1096) was granted on 6 September 1984 for 'caravan park for 16 touring caravans and access alterations' for the southern area of the site. This permission includes a condition that the number of caravans on the existing and proposed site shall not exceed 26 and shall be limited to touring caravans only and a

condition that the site shall be used as a caravan site only between 1 March and 31 October in any year. Planning permission (Ref 87.0272) was granted on 8 July 1987 for 'use of pasture to enlarge existing caravan park and by altered layout, increase by 10 the maximum number of caravans permitted to 26'. The permission includes a condition that the caravans be limited to touring caravans only and a condition limiting use to between 1 March and 31 October in any year. Planning permission (ref RR/98/50/P) was granted on 19 February 1998 on land to the north of that covered by planning permission ref 87.0272 for 'extension of caravan park to cater for an additional 10 touring caravans' and storage for 36 caravans on other parts of the site.

5. The application the subject of this appeal concerns part of the site of planning permission ref RR/98/50/P (the 1998 permission) . The proposed use as stated in the application is the siting of static caravans for year round residential use.

6. The appeal turns on the interpretation of the 1998 permission. The point in dispute between the parties is whether the 1998 permission limits the use of the land to touring caravans. The description of development in the 1998 permission refers to '10 touring caravans' there is no condition limiting use of the land for the siting of any particular type of caravan. There is no condition limiting year round use of the site.

7. The case of I'm Your Man[1] established the principle that if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition. The 1998 permission includes no condition restricting the particular type of caravan permitted. I do not agree with the Council that the reference to touring caravans in the 1998 permission goes to the heart of the use. It is a purported limitation and whilst it was open to the Council to limit the meaning of caravan park by condition (as it did in planning permissions ref 84.1096 and 87.0272) it did not do so.

8. The Council argue that the I'm Your Man principle is not relevant because the would be a material change of use of the land from the siting of touring caravans to the siting of static caravans. They rely on the Winchester [2] case which involved a change of use from agricultural land to a site for travelling showpeople. But in this case I am not persuaded that a change in the use of a caravan park from the siting of touring caravans to the siting of static caravans would constitute a material change of use. There is no separate statutory definition for a touring or static caravan but one single definition of a caravan which embraces both types of vehicle. Whilst I agree that touring and static caravans may have different characteristics in, for example, their size and appearance of permanence, as outlined in the Blossoms Nursery and Haven Leisure appeals, they both fall within the description of development in the 1998 permission, namely caravan park. This distinguishes the facts of this appeal from the planning appeal decisions cited by the Council.

9. The Council argue that the 1998 permission does not stand alone but builds on planning permission RR/87/0272 which contains conditions limiting the type of caravan. But I must interpret the 1998 permission on its face and

[1] I'm Your Man Ltd v SSETR [1999]77 P&CR 251
[2] Wall and others v Winchester City Council [2015] EWCA

the conditions on the 0272 permission are not repeated in the 1990 permission.

10. I find that on the facts of this case that the reasonable interpretation of the 1998 permission is for a caravan park sui generis use that is not limited to any particular type of caravan. That being the case the proposed use for the siting of static caravans falls within the 1998 permission.

11. The proposal is for year round residential use. The 1998 permission does not include any seasonal condition. The Council argue that the fact that there is no requirement to remove any of the touring caravans from the site is not the same as a permanent residential use. They say that even where tourers are on site all year round the nature of their stay and their holiday or other temporary use would be materially different to static caravans for year round use. But as I have concluded that the 1998 permission does not distinguish between types of caravan then in the absence of a condition there is no seasonal restriction, whatever the type of caravan.

Conclusion

12. I find that on the particular facts of this case that the 1998 permission is for a sui generis caravan park use. It is not limited by condition to any particular type of caravan. It is not restricted to touring caravans nor to a seasonal use. But it is restricted to ten caravans. I therefore conclude that the proper interpretation of the 1998 permission construed as a whole means that the siting of ten static caravans would benefit from extant planning permission Reference RR/98/50/P and be lawful.

13. 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 siting of static caravans for year round use 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.

Other matters

14. The parties refer to a number of other matters in their submissions. I do not find the reference to other enforcement notices or site licensing conditions to be relevant to the matters before me . None of the other matters raised cause me to alter my conclusions on the main issue.

Formal Decision

15. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed development which is considered to be lawful.

S. Prail

INSPECTOR

The Planning Inspectorate

LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by the Planning and Compensation Act 1991)

IT IS HEREBY CERTIFIED that on 18 April 2016 the operations 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 would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The operations described in the first schedule would be lawful by virtue of planning permission Ref 88/98/50/P.

The development does not contravene the requirements of any enforcement notice in force.

S.Prail

INSPECTOR

Date:27 April 2017

Reference: APP/U1430/X/16/3164696

First Schedule

The extension of caravan park to cater for an additional 10 static caravans for year round residential use in accordance with planning permission Ref 88/98/50/P.

Second Schedule

Land at Meadowview Park, Crazy Lane, Sedlescombe, Battle, TN33 OQT, more specifically the land the subject of planning permission RR/98/50/P.

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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 operation is only conclusively presumed where there has been no material change, before 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: 27 April 2017

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Not to Scale

