The Planning Inspectorate

Appeal Decision

Site visit made on 15 June 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/C1950/X/16/3166163
The Firs Park, Woodside Lane, Hatfield AL9 6DG

- 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 (hereinafter "certificate").
- The appeal is made by Mr and Mrs G Miller against the decision of Welwyn Hatfield Borough Council.
- The application ref. 6/2016/1466/LAWP, dated 19 July 2016, was refused by notice dated 15 November 2016.
- 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 is sought is "the proposed use of land within the existing caravan site boundaries for the siting of static caravans without restriction on the layout of the land or the number of caravans up to a maximum of 8 caravan units on the site at any one time".

Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr and Mrs G Miller against the Council. This application is the subject of a separate decision.

Preliminary matters

3. A clear description of the proposal does not appear on the application form. The description of the proposal in the last bullet point in the heading above is taken from the Council's decision notice. It exactly reflects the wording found in the heading of the appellant's letter/statement of 19 July 2016 which accompanied the application. The section on the Council's decision notice titled *Refused Plans and Details* has not been completed. The parties agreed at the site visit that the *Location plan* dated 19 July 2016 had been superseded by the *Plan defining the planning unit* dated 14 September 2016. I have therefore considered that latter plan alongside the drawing numbered 160428.3 (*Proposed Layout Plan*).

4. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.

5. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant, and they are not therefore issues for me to consider, in the context of an appeal made under section 195 of the 1990 Act as amended.

6. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities. The assessment is based on whether or not the proposed development would be lawful if begun at the time of the application.

Main issue

7. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

8. The Firs Park is a long-established site for static caravans or park homes. The relevant planning history is covered in the written representations. I find that 2 items of planning history are particularly important material considerations.

9. A certificate was granted on appeal (ref. APP/C1950/X/15/3132654) on 23 February 2016 which confirmed that the rectangular area of land to the east of the main developed body of Firs Park was part of the planning unit comprising the established park home site and that 2 new park homes situated on the western edge of this same rectangular area would not constitute a material change of use of the land.

10. A certificate was granted by the Council (ref. 6/2016/0879/LAWP) on 30 June 2016 which allowed for the relocation of the 2 new park homes permitted under that appeal decision. Instead, the park homes were to be located at the western and eastern ends of that same rectangular area and on different sides of a road leading west-east through the centre of that area.

11. The latter decision reconfirmed the overall increase in park homes at Firs Park from 44 to 46 and permitted the siting of a park home at the eastern extremity of the rectangular area. I saw that this certificate has been substantially implemented; the park home at the eastern extremity of the rectangular area has been installed, the base for the park home at the western extremity is in place and the road has been constructed. I shall consider the proposal before me as it was submitted but in effect it was, given the planning history, for an additional 6 park homes (maximum) within this rectangular area. Whilst the flexibility within the application terms is not objected to by the Council in principle, it seems to me that if 8 park homes were to be required they would probably need to closely follow the proposed layout plan submitted with the application, particularly as the park home and the base for another, now on site, accord with that plan.

12. The main issue turns on whether the proposed siting of the caravans would amount to the making of a material change in the use of the land. The parties

agree that materiality must be assessed against the planning unit which in this instance is the whole park home site as edged red on the plan defining the planning unit.

13. The Council found that the proposal, by virtue of the intensification of the use and the change in the definable character, would constitute a material change of use of the planning unit.

14. Intensification does not amount to a material change unless and until the fundamental character of the use changes, for example where the land use planning consequences are materially different. It can be necessary to consider both what would be happening on the land and the impact off the land when deciding if the character of the use has changed.

15. In *R (John Childs) v First Secretary of State and Test Valley Borough Council [2005] EWHC 2368 (Admin)*, it was held that a change in the number of caravans, however great, was capable of amounting to a material change of use. The Court upheld the Inspector's finding that a change from 4 caravans to a proposed use for 8 caravans would be material based upon a change in the character of the use and the impact on the immediate surroundings including visual amenity and traffic.

16. All cases must however be assessed on their own merits and it is important to record that the Inspector in the *John Childs* case was dealing with basically an open field in an undulating landscape and with a proposal to double the number of caravans. This would have resulted in the land appearing as a developed site and would have doubled the activity on the site itself and the vehicular movements to and from the site. However, I do not find the same planning consequences occurring with the appeal proposal before me.

17. In numerical terms, the appeal scheme does not seek to double the number of caravans. Instead, there would be only a very modest percentage increase in numbers whether one works with an increase of 6 or 8 caravans or a baseline figure for the caravan park as a whole of 44 or 46 caravans. The Council presents no evidence to suggest that there would be a material impact on the highway network. Similarly, I cannot foresee any off-site effects of this nature which would trigger a material change in the use of the land.

18. In terms of visual impact, the rectangular area in question is a small part of the overall planning unit. A substantial portion of it is further away from Woodside Lane than all other parts of Firs Park. There is dense woodland to the south of it, open farmland to the east with mature trees and vegetation to the common boundary and a wide area of open land to the north outside the confines of the caravan site but in the appellant's ownership. I have not been referred to any public footpaths across the site or in the near vicinity of it.

19. In the appeal decision of 23 February 2016, the Inspector stated: "The additional units would not be visible from public viewpoints except at long distance from immediately outside the site entrance - and then they would only be seen in the context of similar units much closer to the lane." I would go somewhat further than that. The subject rectangular area of land is situated well above the level of Woodside Lane. Any views up the main entrance towards this area are limited by the change in topography, take in the fine backdrop of tall trees on the eastern boundary and are partly hindered by

pockets of well-maintained shrub planting or parked cars. It is also a very narrow viewpoint in itself.

20. Any interested observers at the main access point on Woodside Lane would be highly unlikely to be able to discern that the rectangular area contained 8 caravans (maximum) laid out on each side of a new internal road. The views they would gain would in fact not be materially different to the views that would be associated with the implementation of the certificate issued on 30 June 2016. In all probability, if the development proposed with the certificate issued on 23 February 2016 had been implemented, it would have been more noticeable from the main access point as both permitted park homes would have been sited close to the western frontage of the rectangular area.

21. Even though the 2 park homes considered by the previous Inspector would have completed the row of park homes on the eastern side of the main internal road without extending further into the open land, the certificate issued on 30 June 2016 placed a park home at the eastern extremity of the rectangular area and introduced an additional road with a park home on either side of it. This is a material consideration of some importance after the appeal decision and before the decision to refuse the subject certificate application was taken.

22. I am clear in my mind that simply populating the remaining land either side of that additional road with 6 more park homes (maximum) to make 8 park homes in total (maximum) would not visually change the definable character of the site or the planning unit as a whole, when viewing from the main entrance to the site.

23. On the balance of probabilities, I therefore consider that the proposed siting of the caravans would not amount to the making of a material change in the use of the land that would require planning permission.

24. For the reasons given above, and having considered all other matters raised, including the appeal decisions and legal cases referred to and the various items of correspondence between the parties, I conclude, on the evidence now available, that the Council's refusal to grant a certificate 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.

Andrew Dale

INSPECTOR