The Planning Inspectorate

Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Appeal Ref: APP/X1118/X/20/3249504
Land at Romansleigh Holiday Park, Romansleigh, South Molton EX36 4NB

- 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 R Bull of Romansleigh Developments Ltd against the decision of North Devon District Council.
- The application Ref 70542, dated 25 September 2019, was refused by notice dated 4 December 2019.
- 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 The use of the land for the siting of additional caravans occupied for holiday purposes .

Decision

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

Application for Costs

2. An application for costs was made by Mr R Bull against North Devon District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Given the matters raised by the appeal and the situation regarding the Covid-19 pandemic, I was of the opinion that there would be no need to visit the site. Both parties were consulted on this, and both agreed that no site visit was required. As it would not prejudice any party, the appeal has been determined on this basis.

4. The description of the development for which a certificate was sought was unclear on the application form. The descriptions from the Council's decision notice and the appeal form differ slightly. I have used that from the latter in my heading, above.

5. I wrote to parties on the 29 October seeking their views on an amended description of the proposed use, should the appeal be allowed. The Council agreed that the proposed amendment would provide clarification and would be appropriate. The appellant raised no objection. I have used that amended description in the attached certificate.

Reasons

6. Under s192(1)(a) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use in question. The onus is on the appellant to prove his case, using evidence that is precise and unambiguous

7. Here, the appellant proposes the use of the land for the siting of an unrestricted number of caravans for holiday purposes. His case is that a lawful development certificate (LDC) should be granted because there were no conditions restricting the numbers of caravans on the site in earlier planning permissions and, as such, there would be no resultant change of use of the land. From the submissions made by both parties, I have taken 'additional' to mean in addition to the 45 described in the initial planning permission for the use of the land for the siting of holiday caravans.

8. That initial planning permission was granted in 1968, (reference NM 2163). Its description was "Use of land as site for 45 caravans and construction of toilet block and septic tank". Two applications were made in 2016 under section 73 of the 1990 Act to use the land without compliance with conditions attached to earlier planning permissions; both were approved. The first, reference 60876, sought to vary condition B attached to NM 2163 to enable year-round holiday use of the site. Planning permission 60876 was granted subject to two conditions. The first required the development to be in accordance with drawing number RHP/001/A and the second related to year-round holiday occupancy of the caravans.

9. The second, reference 61536, sought to vary condition 2 attached to 60786. Application 61356 was approved subject to two conditions. The first, again, required adherence with drawing RHP/001/A. The second changed the terms of condition 2 of 60786, relating to the occupation of the caravans.

10. On both permissions, drawing number RHP/001/A is a 1:2500 plan that identifies the land to which the planning permissions relate by way of a red line only. It includes no details relating to how the site should be laid out.

11. It is common ground that none of the permissions was subject to a planning condition that restricted the number of caravans.

12. That there is no such controlling condition is the nub of the appellant's case for a certificate to be issued. In this, he cites *I'm Your Man Limited v Secretary of State for the Environment* [1998], *R (on the application of Altunkaynack) v Northamptonshire Magistrates Court and Kettering BC* [2012] and *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC* [2014]. These, he says, support his contention that in the absence of a condition controlling the number of caravans at the site, his certificate should have been issued. He further points to a number of appeal decisions[1] which he says supports this principle.

13. The Council takes the view that the permissions that have been granted do not, and were never intended to, allow for more than 45 caravans on the site. On their plain reading, it says, the decisions granted permission for the siting of 45

[1] APP/X1118/X/18/3217206 - Ruda Holiday Park, Moor Lane, Croyde, Devon EX33 1NY
APP/J1535/C/14/2225843 - Land at Greenacres, Silver Lane, Willingale, Essex CM5 0QL
APP/U1430/X/16/3164696 - Land at Meadowview Park, Crazy Lane, Sedlescombe, Battle, TN33 OQT

caravans on the land. Neither the planning authorities involved, nor the appellant, contemplated that additional caravans could be moved to the site, except by way of a specific grant of planning permission.

14. In support of its case, it brings forward the judgement in the Supreme Court case of *London Borough of Lambeth v SSHCLG & Others* [2019]. That judgement, it says, concluded that the starting point for the interpretation of the planning permission is to find *"the natural and ordinary meaning"* of the words used, viewed in their particular context and in the light of common sense. When applied to the use of the land at Romansleigh, the three relevant permissions have the cumulative effect of establishing a caravan site for up to 45 holiday caravans.

15. Using the natural and ordinary meaning, the Council goes on to say, an increase in the number of caravans on the land would be outside the parameters of the permissions. Further, the appellant could have expressly sought permission for an increase in numbers in the 2016 applications, but did not. It goes on to say that he could still do so through a planning application.

16. Citing case law[2], the Council states that the intensification of an existing use may comprise a material change of use that would constitute development. It accepts that mere intensification would not of its own equate to a material change of use, there would need to be a material change in character as well. It states that, given its open countryside location, any significant intensification would result in a material change to the definable appearance and character of the land when compared to its present use. Therefore, there would be a material change of use.

17. The contention that the intensification of a use might amount to a material change of use is not challenged. On this point, the appellant's position is that such a change of use cannot occur where the number of caravans is unrestricted.

18. The *Lambeth* case differs from that which is before me. There, the Supreme Court addressed whether a permission granted under s73 of the 1990 Act should be interpreted as containing a condition imposed on previous permissions that restricted the use of premises. Its answer was that it should. However, here, there was no condition controlling numbers of caravans on the land in the original permission, so no such condition could be brought forward by the 2016 s73 applications.

19. The *I'm Your Man* case has strong parallels with this appeal case. In that judgement, the Court held that the description of development alone did not restrict the use permitted by a grant of planning permission. A condition to this effect was required. This principle has been revisited and supported in the *Altunkaynack* and *Cotswold Grange Country Park* cases.

20. At Romansleigh, whilst the description of development in NM 2163 referred to the use of land for 45 caravans, neither this nor the permissions from 2016 included a condition restricting the number of caravans on the land to 45.

[2] James v Secretary of State for Wales [1966] AC 409;
R(on the application of Childs) v First Secretary of State [2005] All ER (D) 190; and
Blum v SSE [1987] JPL 278.

Thus, there is no control on the number of caravans that might be sited on the land, in the manner required by *I'm Your Man*.

21. As there is no condition restricting the number of caravans that might be sited at Romansleigh, the lawful number is unlimited in planning terms. Therefore, there could be no 'increase' that would lead to a material change of character, and thus a material change of use, as there is no 'base figure' against which such a change might be assessed.

22. The appellant could have made an application to specifically increase the number of caravans at the site. However, as planning permission exists for the use of the land for the stationing of caravans without any condition restricting their number, so there is no overriding reason for him to do so.

23. Whilst it might be true of the Council's position in 2016, it does not substantiate the suggestion that the appellant never contemplated additional caravans on the land.

24. Given my findings, above, neither that the site is in the open countryside, nor the effect on "minor roads", provides justification for the claim that a material change of use would result.

25. I have taken account of the third-party representations that have been made. However, as they relate to 'planning considerations' they are not relevant to my decision, which is made on the lawful use of the land.

Conclusion

26. For the above reasons and taken in the overall round, the proposal to the use of the land for the siting of more than 45 caravans occupied for holiday purposes on the land would be lawful. This is because it falls within the terms of planning permissions NM 2163, 60876 and 61536. Therefore, 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 the land for the siting of additional caravans occupied for holiday purposes 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.

Roy Curnow

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 25 September 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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:

Planning permissions on the land have established its lawful use for the siting of caravans occupied for holiday purposes. None of these planning permissions contains a condition that places a restriction on the number of such caravans that might be sited on the land.

Signed

Roy Curnow
Inspector

Date: 05 November 2020
Reference: APP/X1118/X/20/3249504

First Schedule
Use of land for the siting of an unrestricted number of caravans occupied for holiday purposes.

Second Schedule

Land at Romansleigh Holiday Park, Romansleigh, South Molton EX36 4NB.

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

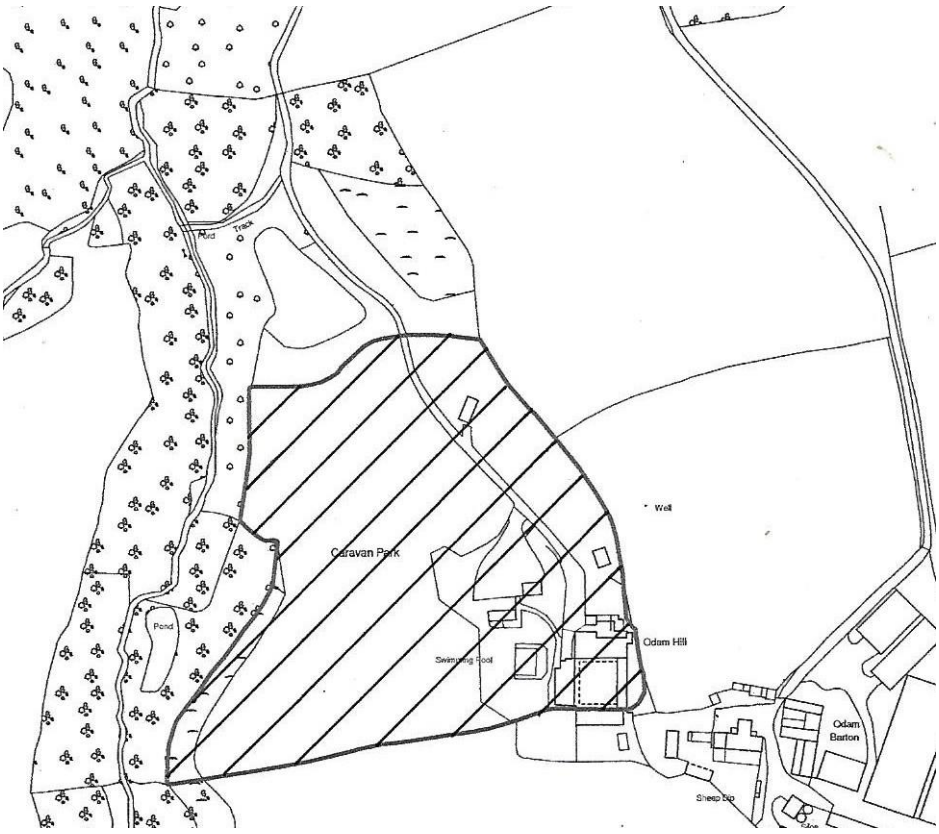
This is the plan referred to in the Lawful Development Certificate dated: 05 November 2020

by Roy Curnow MA BSc(Hons) MRTPI

Land at: Romansleigh Holiday Park, Romansleigh, South Molton EX36 4NB

Reference: APP/X1118/X/20/3249504

Scale: Not To Scale



The Planning Inspectorate

Costs Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Costs application in relation to Appeal Ref: APP/X1118/X/20/3249504
Land at Romansleigh Holiday Park, Romansleigh, South Molton EX36 4NB

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr R Bull for a full award of costs against North Devon District Council.
- The appeal was against the refusal of an application for a certificate of lawful use or development for the use of the land for the siting of additional caravans occupied for holiday purposes.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. An application for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

3. In his application, Mr Bull states that the Council acted unreasonably and cites the example from the PPG that reads, where a party acts contrary to, or does not follow well-established case law. He says that the Council suggests that in the absence of a controlling condition, descriptive terms regarding the number of caravans on the site are enforceable. However, it could not, he says, identify case law to this effect. He says that the application was not unusual, nor did it raise any new issues that distinguish it from established case law. He states that he submitted a further application in an attempt to preclude the appeal. He concludes that its actions were unreasonable and seeks a full award of costs.

4. The Council, in response, rehearse the usual approach to the parties bearing their own costs from the PPG, set out above. It says that it is an arguable case and it took relevant case law into account. In the light of this, it was entitled to interpret the ordinary and natural meaning of the 1968 consent. It took account of case law regarding intensification, which the appellant did not significantly address. It states that the further application made by the appellant is immaterial. Its overall position is that its actions were not unreasonable and followed good practice.

5. The reasoning for the refusal to issue the certificate in the Council's delegated report was scant. In essence, it was limited to the statement "that the

permissions granted do not have the effect which is claimed". There was no explanation as to why this was the case.

6. The Council's statement of case did make reference to case law, particularly *London Borough of Lambeth v SSHCLG & Others* [2019]. However, for reasoning set out in my appeal decision, I found that *Lambeth* discussed a matter that was different to that which is the case here.

7. Given the history of the site and the issues raised by the appeal, the most relevant case is *I'm Your Man Limited v Secretary of State for the Environment* [1998]. This and later cases citing it were referred to by the appellant. These are not mentioned in the Council's case.

8. Had the Council applied the terms of the judgement in *I'm Your Man*, it would have been apparent that there was no restriction in any of the earlier planning permissions on the number of caravans that might be stationed on the land. Therefore, given this lack of a limit on the number of caravans on the site, there could be no material change of use of the land through the intensification of the number of caravans sited there. The appellant did address this point as far as he needed to, to show that the Council's approach was wrong.

9. Case law demonstrates that the planning permissions gave no control over the number of caravans that could be sited on the land. This should have led to the certificate being issued. The refusal to do so ignored established case law on the issue, which was also the case at the appeal stage. Therefore, the Council has acted unreasonably contrary to the guidance in the PPG and this led to the appellant facing unnecessary expense.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Devon District Council shall pay to Mr R Bull, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to North Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow

INSPECTOR