



Appeal Decision

Hearing and site visit held on 29 May 2013

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 9 July 2013

Appeal Ref: APP/G1630/X/13/2191279

Cotswold Grange Country Park, Meadow Lane, Twyning GL20 6DQ

- 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 Cotswold Grange Country Park LLP against the decision of Tewkesbury Borough Council.
 - The application Ref 12/00718/CLP, dated 11 July 2012, was refused by notice dated 3 December 2012.
 - 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 proposed siting of six caravans for residential occupation.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The LDC application was submitted by the Cotswold Grange Country Park LLP (which I will refer to as '*the appellant company*'). The appellant company owns wider land that is used as a Caravan Park, but was not included in the area outlined in red on the plan submitted with the application. The planning agent confirmed that the red land was the area to which the LDC relates to, and for consistency and clarity, I will refer to it as '*the application land*'.

Reasons

3. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded.
4. In this appeal, the onus of proof is firmly upon the appellant company whose own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the company's version of events less than probable, there is no good reason to refuse the application, provided the evidence submitted by the appellant company alone is sufficiently precise and unambiguous on the balance of probability¹.
5. Cotswold Grange Country Park is a holiday Caravan Park located close to the River Avon, Twyning. The site has an extensive planning history the most

¹ For further guidance, see Circular 10/97: '*Enforcing Planning Controls: legislative provisions and procedural requirements*' and in particular Annex 8: '*Lawfulness and the Lawful Development Certificates*'.

pertinent aspect of which was referred to in the written submissions². In 2005, planning permission was granted for the '*change of use from agricultural land to extension to existing holiday Caravan Park (stationing of 30 additional static caravans)*'³. On 25 May 2010, planning permission was granted '*to erect static caravan for site office and wardens use [sic], replace and re site 40 static caravans and provide 14 additional static caravans (within original area) and ancillary works (partially retrospective) all for year round holiday use*'⁴. The agreed evidence was that the 2010 permission was implemented. It is this area that the LDC relates to.

6. The LDC describes the proposed development as the siting of six caravans for residential occupation. The caravans would be positioned as shown on a drawing submitted with the LDC; the six caravans are shown as rectangles. These would be located within an area identified on the plan submitted with the 2010 permission as '*amenity area*'.
7. The Council's main argument is that the proposed development was not lawful on the date of the application. The assertion is that the proposed use of the application land for the siting of six caravans for residential occupation is not in accordance with the terms of the 2010 permission. On the other hand, the gist of the appellant company's main argument is that the siting of six caravans would not be in conflict with the terms of the 2010 permission, which had not imposed a condition restricting the number of caravans.
8. In interpreting the effect of a planning permission, the intention of either the developer or the Council is immaterial. It is the content of the documents that were placed on the planning register that is relevant. Planning permissions are to be interpreted in a common sense manner. Considerable importance is attached to the property and ownership implications of the grant of planning permission; that is because the control of development under the Planning Acts restricts what the owner could normally expect to do with his/her property.
9. Broadly, the public should be able to rely on a document which is plain on its face without having to consider whether there is any discrepancy between the planning permission and the application. A grant of planning permission runs with the land and may come into the hands of people who have never seen the application at all. It cannot be limited by reference to the application. The implications are that any controls or limitations attached to a planning permission need to be clearly and precisely stipulated within the four corners of that permission. In other words, if something is not specifically controlled by the planning permission, including any conditions imposed upon it, then, by implication, it is permitted.
10. Conditions cannot be implied into a planning permission, which is established in the case of *I'm Your Man v SSE (1999) 77P&CR 251*. This case underlines the principle that members of the public are entitled to rely upon planning permissions and the rights they convey. The case concerned a temporary planning permission that had no condition requiring cessation of the use at the end of the relevant period. Mr Robin Purchase Q.C., sitting as a Deputy Judge, held that there was no power implied to impose limitations on a permission granted otherwise than by a development order. Failure to impose a condition

² See planning statement by EJ Planning Ltd and section 3.0 to the Council's statement.

³ Council's planning permission ref: 05/1256/0215/FUL dated 26 May 2005 subject to six conditions.

⁴ Planning permission ref: 09/00388/FUL 'the 2010 permission' subject to six conditions.

limiting the planning permission to a temporary period could not be implied, but should be explicitly expressed.

11. In *R v Ashford Borough Council ex parte Shepway District Council* [1999] 2PLCR 12, QBD (Ashford), when examining the question as to whether an outline planning permission could be interpreted by recourse to the underlying planning application, Keene J (as he then was) provided a useful summary of the principles to be employed. These principles were considered in the context of a full planning permission by Sullivan J (as he then was) in the case of *Barnett v SSCLG* [2008] EWHC 1601 (Admin) (*Barnett*) and subsequently in the Court of Appeal⁵.
12. Turning first to the contention that the 2010 permission did not restrict the number of caravans, it expressly permitted, subject to six conditions, the following development:

'To erect static caravan for site office and wardens use [sic], replace and re site 40 static caravans and provide 14 additional static caravans (within original area) and ancillary works (partially retrospective) all for year round holiday use'.
13. There is no dispute between the Parties that the application land was, at the date of the LDC application, in use as a caravan site for all year round holiday use. The wording of the 2010 permission's description is, in my view, precise and clear. The given description is unambiguous and it expressly limited the use of the land as a caravan site for all year round holiday use. The grant of planning permission permitted the erection of a site office for a warden's use, and the replacement and re-siting of 40 static caravans and the provision of 14 additional static caravans. All six conditions imposed upon the 2010 permission relate to the described development. Therefore, the description alone defined the use of the application land and restricted the number of static caravans to 54 with an additional site office for a warden's use.
14. If there is any possible scope for ambiguity from the stated description, applying *Ashford*, it would be reasonable to look at extrinsic material such as the approved site layout plan dated April 2009⁶. There is no dispute between the Parties that the site layout plan, which is referred to in the decision notice as the submitted plans, clearly showed the positioning of the static caravans coloured in pink rectangles and numbered one to 54. The warden's office is identified with a 'W' and located close to the entrance of the Caravan Park. The static caravans are arranged around an amenity area. The 2010 permission is a full planning permission and the description of development can be properly understood if reference is made to the site layout plan. In this particular case, the grant of full planning permission is incomplete without the approved site layout plan, which precisely shows what was permitted and where (*Barnett* applied). Therefore, even if there is any ambiguity in the description of the development as claimed by the appellant company's planning agent, that confusion would be sufficiently resolved by reference to the site layout plan.

⁵ See *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476, [2010] 1 P. & C.R.

⁶ See Appendix 3 to the Council's bundle of evidence.

15. Turning next to the appellant company's claim that there is no condition imposed upon the 2010 permission limiting the number of caravans. The Parties referred to condition number 3 which stated the following:

'The re-sited 40 static caravans and additional 14 static caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole, or main place of residence. The owners/occupiers shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans on the site, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority'.

16. The reason for imposing the condition states that the site is unacceptable for general residential use given its location in the open countryside. In my view, the wording unambiguously applies the restriction on holiday use only to a total of 54 static caravans. To that extent, it reflects the description given in the grant of planning permission.
17. Taking the description of the development together with the wording of condition no. 3, I find that the 2010 permission defined the use of the application land and limited the number of static caravans to 54 plus a site office for a warden's use. The stationing of the proposed six caravans for residential occupation would be in conflict with the terms of the 2010 permission.
18. The Council's alternative argument was that if the 2010 permission was found to be unrestricted and gave a general planning permission for the use of the application land as a caravan site, the siting of six additional caravans for residential occupation would amount to a material change of use of the application land. However, as I have found that the proposed development would not be lawful at the date of the application, because it would not comply with the terms of the 2010 permission, I do not need to consider whether or not a material change of use of the application land would occur through intensification.

Conclusion

19. For all of the above reasons and on the balance of probabilities, the proposed development would not be lawful at the date of the LDC application, because it would have conflicted with the terms of the 2010 permission. Therefore, I conclude that the Council's decision to refuse the LDC was well-founded. The appeal should fail. I shall exercise accordingly the powers transferred to me in section 195 (3) of the Town and Country Planning Act 1990 as amended.

A U Ghafoor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Eiser

EJ Planning

C Nedic

Cotswold Grange Country Park LLP

FOR THE LOCAL PLANNING AUTHORITY:

Joan Desmond

Tewkesbury Borough Council

INTERESTED PERSONS:

T Spencer

Interested party

PLANS SUBMITTED AT THE HEARING

A Site layout plan submitted with application ref: 12/00713