



Appeal Decisions

Site visit made on 8 August 2017

by **C Sherratt DipURP MRTPI**

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

Decision date: 29 November 2017

Appeal A - Ref: APP/L3245/X/16/3163851

Pool View Caravan Park, Much Wenlock Road, Buildwas, Telford, TF8 7BS

- 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 C Nedic against the decision of Shropshire Council.
 - The application Ref 16/02691/CPL, dated 9 September 2016, was refused by notice dated 9 September 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 of lawful use or development is sought is use of land for up to 12 caravans for the purposes of human habitation throughout the year.
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Appeal B - Ref: APP/L3245/X/16/3163852

Pool View Caravan Park, Much Wenlock Road, Buildwas, Telford, TF8 7BS

- 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 C Nedic against the decision of Shropshire Council.
 - The application Ref 16/02745/CPL, dated 16 June 2016, was refused by notice dated 9 September 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 of lawful use or development is sought is use of land for up to 20 caravans for the purposes of human habitation throughout the year.
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Decisions

1. The appeals are dismissed.

Main Issue

2. The main issue is whether the proposed use of land for up to 12 or 20 caravans in the areas identified on the respective applications for human habitation would have been lawful on the date of the applications for certificates of lawfulness.

Reasons

3. Two planning permissions are relevant to the certificates. Case law has established that in the case of a permission limited by the description of development, the use of the land could subsequently be changed without any breach of planning control so long as the change is not material. But in the

case of a condition, a change of use in breach of a condition could be a breach of planning control whether or not the change of use was material.

4. There is no suggestion that the stationing of caravans for human habitation would constitute a material change of use of the land. The appeals therefore turn on whether the occupation of up to 12 or 20 caravans respectively, stationed on the area of land identified on the plan that accompanied the applications, for human habitation throughout the year would be in breach of any conditions imposed on the relevant permissions.

Appeal A

5. In relation to Appeal A, planning permission was granted on 5 December 2007 for the "change of use of grassed area into land for siting of 12 mobile homes for holiday purposes, formation of access track and car parking area and installation of footbridge" (reference 07/01586/F) ('the 2007 permission'). The description of the development permitted is, in my view, unambiguous and the permission is clear on its face. It permits the use of land as a caravan site. It relates to the area of land identified in the application that is the subject of Appeal A. The planning permission is subject to a number of conditions.
6. Condition 2 of the 2007 permission requires that the development shall only be carried out in complete accordance with the submitted and approved plans. Condition 2 is not a condition that, in my view, is capable of restricting the use of the site – it only concerns the approved plans which show a layout accommodating 12 pitches. The Council relies on condition 2 as restricting the number of caravans that can be accommodated and the layout. The LDC is only for the stationing of 'up to' 12 caravans in any event and so is not seeking any additional pitches. It is not necessary for the purposes of this appeal to consider if an increase in caravans stationed on the site would constitute a material change of use.
7. I do not accept the Council's proposition that condition 2 can be interpreted as preventing alterations to the approved layout once the development has been carried out in accordance with it, if those alterations would not constitute development requiring separate planning permission or be in breach of other conditions. Condition 2 does not prevent the use of land for up to 12 caravans for the purposes of human habitation throughout the year.
8. Condition 6 states:
 - a) The chalets / log cabins shall be occupied for holiday purposes only;
 - b) The chalets / log cabins shall not be occupied as a person's sole, or main place of residence;
 - c) The operators of the site shall maintain an up-to-date register of the names of all owners of individual chalets / log cabins on the site, and of their main home addresses etc;
 - d) There shall be no –sub-letting etc.The reason for the condition was to ensure the approved holiday accommodation is not used as permanent residential accommodation.
9. It is not clear why this condition uses the words chalets / log cabins rather than caravans referred to in the description of development. Given the permission

is clearly for the use of land and not buildings, I consider nothing turns on the different terms used and whether best described as the stationing of a mobile home, chalet or log cabin the permission is clearly for the use of land and not buildings. Accordingly any chalet / log cabin would have to meet the definition of a caravan to fall within the terms of the permission.

10. The appellant asserts that whilst condition 6 controls how holiday caravans are occupied, it does not however extend to limiting that there may only be holiday caravans on site. The implication being that non-holiday caravans can be stationed on the site and occupied without restriction. In support of that proposition the judgement of Cotswold Grange is cited by the appellant¹.
11. The application in that case was for a certificate of lawfulness for the siting of six additional caravans on the site for residential use. The condition at issue read: *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.....* It was found that the Inspector had failed to respect the difference between a limitation of numbers of caravans in the description in the grant (present in that case) and a limitation of such numbers in the form of a condition (not present). Only the latter was capable of imposing a limitation in law. An earlier permission was said by the judge to be an appropriate condition to restrict the number of caravans. It read "The land shall not be used for more than 30 static holiday caravans."
12. Following established principles derived from *I'm Your Man* and the Cotswold Grange judgement, the grant of a permission identifies what can be done – what is permitted – so far as the use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control.
13. I consider the development for which a certificate of lawfulness is sought in this case can be distinguished from that in Cotswold Grange in that the condition at issue in that case clearly only controlled the occupation of the re-sited 40 static caravans and additional 14 caravans. In the absence of a condition that similarly restricted the use of the site to the stationing of no more than 56 caravans and so controlled the number, those same restrictions on occupation could not apply to any additional caravans.
14. In contrast, in the current appeal, condition 6 relates to 'the' unspecified number of chalet / log cabins for which planning permission is granted and requires them, in sub-section (a), to be occupied for holiday purposes only. It clearly prevents occupation of caravans within the site except for holiday purposes. This is further reinforced by sub-section (b) which states that the chalets / log cabins shall not be occupied as a person's sole or main place of residence.

¹ Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government & Tewkesbury Borough Council [2014] EWHC 1138 (Admin)

15. Whilst it is accepted that the condition is not expressed as “The land shall not be used for more than 12 holiday caravans” the use of the word “only” in condition 6, sub-section (a) read alongside negatively worded sub-section (b) is in my view sufficient to impose a limitation in law.
16. To conclude the use of the land for up to 12 caravans for the purposes of human habitation throughout the year was not lawful on the date of the application.

Appeal B

17. On 21 March 2010 planning permission was granted for the change of use of part of touring caravan site for the siting of 20 static holiday homes. A number of conditions were imposed of which condition 2 and 3 are of relevance. Condition 2 requires the development to be carried out in accordance with the approved plans and drawings. Condition 3 states (a) the holiday homes shall be occupied for holiday purposes only; and (b) the holiday homes shall not be occupied as a person’s sole or main place of residence. These reflect the wording of the conditions assessed under Appeal A.
18. For the same reasons set out above in relation to Appeal A, I conclude that the use of the land for up to 20 caravans for the purposes of human habitation throughout the year was not lawful on the date of the application.

Overall Conclusions

19. For the reasons given above I conclude that the Council’s refusal to grant certificates of lawful use or development in respect of use of land for up to 12 caravans for the purposes of human habitation throughout the year (Appeal A) and use of land for up to 20 caravans for the purposes of human habitation throughout the year (Appeal B) was well-founded and that the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

C Sherratt

INSPECTOR