The Planning Inspectorate

Appeal Decision

Inquiry held on 19 July 2016

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 01 September 2016

Appeal Ref: APP/B9506/X/15/3138718
Land at Avonvale Sun Club, Highwood Lane, Highwood, Ringwood, BH24 3LZ

- 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 Peter Timbrell against the decision of New Forest National Park Authority.
- The application Ref 15/00397, dated 18 May 2015, was refused by notice dated 23 July 2015.
- The application was made under section 191(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 the site by its occupiers for overnight sleeping in caravans, campervans and tents ancillary to the approved use of the site for recreational purposes.

Summary of Decision: The appeal is dismissed.

This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 9 August 2016.

Application for costs

1. At the Inquiry an application for costs was made by the Appellant against the Authority. This application is the subject of a separate Decision.

Procedural Matter

2. All witnesses gave oral evidence to the Inquiry after they had either taken the oath or made an affirmation.

3. The description of the existing use set out in the heading above is that on the application. In the statement of evidence to support the application the description was clarified as '3 touring caravans at any one time limited to 4 times a year; Use of camper vans for sleeping on no more than 8 separate occasions in any one year; 15 tents on a weekend when hosting a special event – 4/6 events a year; Tents for no more than 2 nights limited to 20 such stays in one year' and such use was only carried out as an ancillary activity to the primary use of the site as a recreational and social club.

4. During the course of the Inquiry Mr Huggett further amended the description to '3 touring caravans at any one time limited to 4 times a year; Use of camper vans for sleeping on no more than 8 separate occasions in any one year; 15 tents on a weekend when hosting a special event – 4/6 events a year; Tents for no more than 2 nights limited to 20 such stays in one year. The use only by current members while engaged in recreational activities on the site'.

5. At my request, after the Inquiry was closed Mr Huggett submitted an amended application plan which showed the area in which the camping and caravanning use was said to have taken place[1]. Ms Mutlow did not agree the amended plan[2].

6. By virtue of s.191(4) and (5) of the 1990 Act I have power to issue a LDC for a substituted description of the existing use if I am satisfied of the lawfulness of that substituted use at the time of the application and I can specify the land to which that use relates. Given the various descriptions of the existing use and the area of land upon which it was said to have taken place, I will take these matters into account in my determination of the appeal.

7. I will refer to the use applied for as a 'camping and caravanning use' for the purposes of this Decision.

Ancillary Use or Material Change of Use

8. One of the reasons for refusal of the application was that 'the use claimed is not ancillary to the permitted use of the land for recreational purposes and would constitute a material change of use requiring planning permission'.

9. The lawful and primary use of the appeal site is 'recreational use'. The original description of the existing use applied for was 'use of the site by its occupiers for overnight sleeping in caravans, campervans and tents ancillary to the approved use of the site for recreational purposes' which was later amended by Mr Huggett to 'The use only by current members while engaged in recreational activities on the site' which I consider is also a description of an ancillary use.

10. Despite the wording of the description, the amended description, and Mr Huggett's statement of case which contains the words '[camping and caravanning over night] has only ever been an ancillary part of enjoying the benefits of a country club' this was not the basis on which the application was made. The application was made on the basis, as stated in the statement of case, that 'the use was immune from any enforcement action because it has taken place continuously for at least the last 10 years'. This was the stance that Mr Huggett continued to take in his closing submissions.

11. However, Mr Huggett had also said during the course of the Inquiry, in response to my questions, that the use was ancillary and that there had been no material change of use and that a LDC would provide immunity from enforcement action[3]. Whether a use is an ancillary one relies on a subjective judgement as to the type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use; this is a test of functional

[1] Document 5
[2] Email attached to Document 5
[3] S.191(2) provides that 'a use is lawful if (a) no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason)'

relationship rather than of extent. An ancillary use does not amount to a material change of use.

12. Given the terms of Mr Huggett's statement of case the Authority's case related purely to whether or not Mr Timbrell could demonstrate, on the balance of probabilities, that the use claimed was a material change of use that had existed for the requisite 10 years. In the circumstances no specific evidence or submissions were made by either Party about the ancillary nature, or otherwise, of the applied for use.

13. In the circumstances, in determining this appeal I will consider whether the camping and caravanning use is an ancillary one or whether it amounts to a mixed use of the appeal site for recreational use and camping and caravanning. If the latter, the Appellant has to prove, on the balance of probability, that the camping and caravanning use began on or before 18 May 2005 and that it has been taking place continuously since then.

Main Issue

14. The main issue in this appeal is the lawfulness of the existing use at the date on which the application was made, that is, 18 May 2015. Planning merits are not relevant in this case as they are not an issue for consideration in an appeal under s.195 of the Act.

Reasoning

15. The appeal site has an area of about 2.2 hectares and is located in secluded woodland in the Western Escarpment Conservation Area within the New Forest National Park. It was originally established for recreational use in 1963[4] and since then there have been a number of planning permissions resulting in the current composition of the site which includes a pavilion, an outdoor swimming pool, boules pitch and tennis courts. In 2005 three caravans were brought onto the site and following a temporary planning permission[5] a permanent conditional planning permission for their siting was granted on appeal in 2011[6].

16. The site has been occupied since 1963 by the Avonvale Sun Club (the Club) which is a members' only club associated with an organisation known as British Naturism. In addition to his statutory declaration made in support of the application and a proof of evidence, Mr Timbrell gave oral evidence to the Inquiry. He said that he has been a member of the Club for some 22 years and up until recently he had been the Chairman, a post he held for some 11 years. The number of members has fluctuated over the years but it has a maximum of about 130 all of whom can come and go as they wish; they access the site via a gate with a coded lock; and members come from a wide area.

17. Mr Timbrell has one of the three permitted caravans on the appeal site and as long as he has been a member of the Club some members have stayed overnight in tents, campervans or touring caravans. He admitted that it was hard to be precise about the numbers of tents, campervans and touring caravans and the frequency of overnight stays. In his statutory declaration he referred to approximately 4 function weekends a year 'where we may have up to 15 member/guest tents, 3 member touring caravans and/or 4 member

[4] Hampshire County Council Ref: RFR 9202
[5] Ref:05/84587
[6] APP/B9506/A/10/2138477

motor homes on site' and tents during the year from '2 or 3 up to possibly 6 on some weekends' with a combination of 'about 5 at most of caravans and campervans'. A second paragraph in his statutory declaration gave different figures.

18. In his proof Mr Timbrell accepted that the 2 paragraphs in his statutory declaration were not clear and he substituted an amended paragraph where he said that there were 4 or 5 special event weekends a year 'where we may have up to our limit of 15 member/guest tents as well as 3 member touring caravans and/or 4 member motor homes' and that during the year 'from 2 or 3 possibly 6 [tents] on some weekends'. So far as members' touring caravans and campervans are concerned, they are 'also allowed to stay … but you would normally only see a combination of about 5 at most'. Mr Timbrell's oral evidence about the frequency and numbers of overnight stays was mainly along the lines of his written evidence.

19. In the past members had phoned the camping officer and booked a spot and then filled in a visitors' book for overnight, or longer, stays which could be enjoyed by members or guests. For the past 6 to 7 years there has been a booking system on the Club's website whereby members, using a password, complete a form to book an overnight, or longer, stay. A maximum of 3 caravans and 15 tents are permitted on any one night and it is not possible to book over those numbers. Those who stay would put the fees in an envelope for the treasurer to collect and record the amounts.

20. There has been little camping during the week but it does happen. Camping is particularly popular when the Club has special events, about 4 to 6 times per year. There were no diaries or other document which showed when these events have taken place.

21. Mr Timbrell had a number of exhibits to his statutory declaration. The first was an extract about naturist clubs and the different facilities that they offered which included 'camping/holiday opportunities'; the second was a clause from Site Rules relating to camping and an aerial photograph of the site annotated to show tent areas and campervan park; the third was 2 photographs, one dated late 60s and the other 70s-80s; the fourth was undated and unattributed emails providing feedback and wishes about camping possibilities in future; and finally an example of the booking form from the website for camping and caravanning. Mr Trimbrell did not rely on these documents but even if he had the exhibits were of little assistance to me in establishing any frequency or numbers of camping and caravanning use given their unspecific and vague nature and lack of factual information relating to the appeal site.

22. Because of privacy issues members were not willing to provide statements. It is unfortunate that there are no written or computer records available to show the bookings that have taken place for the tent and caravan sites. I do find it surprising that information is not available from the website but Mr Timbrell explained that he had been told by the 'webmaster' that no data was kept. There is no statutory or other requirement that requires documents to be kept or for accounts to be kept by the Club. The accounts are solely for members to see how their membership fees are being spent. It was Mr Timbrell's evidence that it was a 'small club which did not keep records'.

23. The accounts, the only relevant documents submitted by Mr Timbrell, include amounts for both camping and caravans from 2002 onwards, with the

exception of year 2005-2006 which is missing. Up until 2010-2011 the fees for the 3 permitted caravans were included but these fees are now incorporated into membership fees and the amounts shown for camping relate to all camping, which includes tents, campervans and touring caravans, that occurs overnight on the site. Mr Timbrell could not be specific about the fees charged, either in 2005 or now, but he thought they were now £5 a night or £7 for caravans or campervans 'hooked-up' to one of the two electric hook-up points. Non-members who stayed as guests, usually during the special events, would pay more.

24. Given the lack of information about the amount of the fees it is not possible with any certainty to specify the numbers or frequency of the camping and caravanning use from the amounts shown on the accounts but I note that the figures for 2006-2007, 2007-2008 and 2008-2009 were respectively £438, £337 and £860 which indicate a relatively low useage; from 2009 until 2014 the figures are greater ranging from £1,259 to £1,690; and they fall again to £823 for the year 2014-2015. This indicates to me that there has been no consistency over the years in the numbers and frequency of overnight camping at the Club.

25. In early 2005 there was an enforcement investigation into the use of the site as a caravan site and for the storage of caravans. It appears that this investigation arose at the time the lease of the site was to be renewed and the owner of the land was concerned about any possible unlawful use. The investigation appears to have led to the successful application for planning permission for the three caravan sites. During the course of that investigation/application process Mr Bryant, a Trustee of the Club, wrote to the Authority that 'it is important to recognise that the caravans were for owners use only; sub-letting was strictly prohibited and no other caravans were allowed on to the site'[7].

26. I do not accept Mr Timbrell's evidence that Mr Bryant had no authority to write that letter and state what he did. Mr Bryant was a Trustee of the Club, he had made the planning application on behalf of the Club and there was no suggestion that, in writing the letter, Mr Bryant was acting dishonestly. I accept that the letter was written before the relevant 10 year period, but it appears likely that the factual situation at that time was as stated by Mr Bryant, that is, that no other caravans were allowed onto the site.

27. There have been a number of planning applications over the years for the various developments on the appeal site but no camping and caravanning use had been mentioned in any accompanying documents submitted by the Club nor had the Authority seen any evidence of such uses during site visits. I appreciate the point made by Mr Huggett that those applications were specifically about the proposals that were the subjects of the applications and that other matters did not need to be mentioned. There was no evidence whatsoever that there was any intention by the Club to 'cover up' what uses may have been taking place on the site at those times and given the timing of visits by the Authority's Officers to the site, that is, during working hours in the week, it is not surprising to me that no camping was seen.

28. There have been no complaints to the Authority since 2005 about the use of the site but representations have been made by interested persons following

[7] Letter dated 6 April 2005

the LDC applications that have been made[8]. These refer to, among other things, a reference by the Chairman that one member had stopped bringing his caravan because of low hanging branches in the lane; and an increase in caravan movements in the lane. The latter point was explained by the Club as an erroneous listing on a website which encouraged speculative visits by non-members who believed caravanning was available at the Club and which had ceased with the correction of the website.

29. The Club's use of the appeal site is understandably and necessarily private and given its secluded location only the members know with any certainty what uses have been taking place on the site. I fully understand why members did not wish to provide evidence but their reluctance to provide evidence does not assist me.

30. I do not question Mr Timbrell's honesty and I acknowledge the lack of evidence from the Authority, but the Planning Practice Guidance advises that an application needs to describe precisely what is being applied for and if the Authority has no evidence of its own the applicant's evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. I also acknowledge that, given the nature of any camping and caravanning use, it is difficult to be precise but Mr Timbrell's evidence about the numbers of tents, campervans and touring caravans and their frequency on the appeal site was confused, confusing and lacking in precision. In addition, his case was severely hindered by the lack of any documentary evidence.

31. There is no question in my mind that camping and caravanning has been taking place at the Club for many years but there is no evidence to the required precision and specificity that the level of use stated in the amended description began on or before 18 May 2005 and that it has been continuous at that level and frequency since then. There is also no specific, unambiguous evidence relating to the level and frequency of use by non-members. Even if there was no material change of use and the claimed for use at that level and frequency was ancillary to the primary use, the evidence is not sufficiently precise and unambiguous to grant a LDC in the terms of the amended description.

32. I have considered whether any LDC could be granted pursuant to my powers under s.191(4) of the 1990 Act bearing in mind that any LDC would be a point of reference against which the materiality of any subsequent intensification or other change of use could be measured. No submissions were made by either Party about whether a camping and caravanning use at any level or frequency on the appeal site would be an ancillary use to the primary authorised recreational use. I am therefore not able to reach any conclusion about what scale of camping and caravanning use, if any, would be an ancillary use.

33. In my view there has not been any evidence or submissions made that would allow me to grant a LDC that describes to the requisite precise level, scale or frequency any camping and caravanning use, whether as a material change of use or as an ancillary use.

[8] A previous LDC application was made (Ref: 13/99140) and was refused

Conclusions

34. For the reasons given above I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of the use of the site for overnight sleeping in caravans, campervans and tents as particularised above was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

35. The appeal is dismissed.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr A Huggett BSc MRTPI	Advocate and Planning Consultant

He called

Mr P Timbrell	Appellant

FOR THE NATIONAL PARK AUTHORITY

Ms J Mutlow	Solicitor

She called

Ms L Young BSc MA MRTPI	Planning Officer
Ms D Slade MA(Oxon) MSc MRTPI	Senior Planning Officer

DOCUMENTS SUBMITTED AT [AND AFTER] THE INQUIRY

Document 1 - The Authority's list of neighbours for the application

Document 2 - Avonvale Sun Club accounts for 2006-2007

Document 3 - Avonvale Sun Club accounts for 2007-2008

Document 4 - Ms Mutlow's closing submissions on behalf of the authority

Document 5 – Amended application plan (not agreed) and associated emails