



Appeal Decision

Site visit made on 3 August 2021

by **Roy Curnow MA BSc(Hons) MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 15th February 2022

Appeal Ref: **APP/B9506/X/20/3258960**

Green Pastures Farm Camping Site, Whitemoor Lane, Ower SO51 6AJ

- 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 Chamois Property 1 Ltd against the decision of New Forest National Park Authority.
 - The application Ref 20/00249, dated 2 April 2020, was refused by notice dated 1 June 2020.
 - 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 year-round stationing and occupation of caravans for the purposes of human habitation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The parties used different descriptions of development at the application stage; however, the Appellant, in its appeal, has used that which was used by the Council in its decision notice. As this is succinct and accurate, I have used it in my decision.
3. The reason for refusing to issue a certificate, in the Council's Decision Notice, is that "The Authority is not satisfied that the use described in the First Schedule would be lawful if instituted or begun at the date of the application for the Certificate of Lawfulness, as the use of the land already exists". Its delegated report sets out that this was because the application was made using the wrong procedure. It opines that the application should have been made under S191 of the 1990 Act, 'Certificate of lawfulness of existing use or development', rather than under the Act's S192, 'Certificate of lawfulness of proposed use or development'. Its reasoning for this being that as the use exists, with the benefit of various planning permissions and certificates of lawfulness that have been issued, so the use cannot be proposed.
4. Section 192(1)(a) states, amongst other things, that if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, he may make an application for the purpose to the local planning authority. This should specify the land and describe the use or operations in question. Further sub-sections of S192 set out the nature of the information that needs to be provided to gain a certificate, how a local planning authority should act if such information is received and the presumed lawfulness of the use or

operations, unless there is a material change of use prior to the use is instituted.

5. Lawfulness is not defined in S192, but is within S191(2) which is relevant to both sections. It states that "*uses and operations are lawful at any time if—*

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

6. Here, the Appellant company proposes to use the land as a caravan site that would not be subject to restriction. It seeks a certificate to show that if it were to use the whole of the land within the red line as an unrestricted caravan site, it would not be possible for the NPA to take enforcement action against the use nor that it would be contrary to the terms of an enforcement notice.
7. No evidence has been put forward to show that there is an extant enforcement notice on the land, therefore the Appellant company seeks to show that the use would accord with the terms of S191(2)(b). In the light of this, it needs to demonstrate that the terms of any extant planning permission on the land does not contain a condition that might be used by the Council to enforce against the use proposed by the Appellant - the test in S192(a). The threshold that it needs to reach is that this would be the case on the balance of probability. The assessment of such a proposal turns on the facts of the case, and there is no role for the planning merits of what is proposed.
8. The Council acknowledges in paragraph 5.7 of its statement that had the Appellant sought to evidence that the use of the land in breach of conditions had become lawful, it would have been possible to determine the application. To my mind, the corollary of this is that if the Council felt that it had insufficient evidence to show this, it could simply have refused the application on that basis. Therefore, I find that it is possible to assess the matter using an appeal under S195 of the Act against a decision on an S192 application. The case put forward by the Appellant would be assessed and, if that succeeded or failed to prove the case on the balance of probability, the appeal should be allowed or dismissed, respectively.

Reasons

9. Green Pastures Farm is sited in the countryside, within the New Forest National Park. It is located close to the M23 in an area that has residential and other uses scattered across it, set amongst fields and extensive areas of woodland.
10. A lane leads from the public road to the farm, where there are several distinct areas of land associated with the siting of caravans. At its south-eastern end is a complex of buildings which, though I did not enter it, appeared not to be part of the Green Pastures site.
11. To the northwest of those buildings are three fields, where caravanning takes place. The first two fields one comes to along the track from the gate are loosely divided by the remains of a hedgerow. Beyond these, to their northeast, is a further field which are also used for caravanning. The former

two fields comprise the land for which the certificate is sought. I refer to that nearest to the farm complex as 'Field A' and the other as 'Field B'.

Notwithstanding it is outside the site area, for the sake of completeness, I will refer to the planning history and restriction for the third field, known as the 'Rally Field'.

12. A surfaced track runs from the lane diagonally through the first field where it divides to give access to the remainder of the Camping Site. At this junction in the tracks there is an amenity building, providing washing and toilet facilities. I saw that standings around the field had electrical hook-ups and taps. I refer to these features as the site's 'infrastructure', below.
13. In 1965, the Minister of Housing and Local Government allowed an appeal, against the refusal of the then local planning authority for the area to permit the stationing of 10 caravans on land at Green Pastures. Although it does not say it, I read this to be a permission for the stationing of caravans for the purposes of human habitation. The plan to which the decision relates is hand drawn and, therefore, has its limitations. Whilst there are some differences in the shape of the two fields, between that hand drawn plan and the Ordnance Survey-based plan for the present proposal, the 1965 decision appears to relate to the two fields that are the subject of the appeal before me. This is also the parties' position.
14. The permission was subject to two conditions, one relating to landscaping and the other stating "That the use be limited to the season 1st April to 30th September in any year".
15. On 24 August 1978, planning permission was granted for the "siting of an additional ten caravans during period Easter to 1st October inclusive". The approved plan uses the OS sheet for the area and shows a portion of the Field B, running alongside the access lane.
16. This permission was subject to two conditions in addition to the statutory time limit. Condition 2 reads "The use shall be limited to the season March 15th to October 31st in each year" and, despite the application being for 10 caravans, Condition 3 reads: "The use of the site shall be limited to not more than 45 caravans only". An explanatory note sets out that the latter condition is a planning limitation and might not be reflected in other legislation.
17. The Appellant company produced a 'Composite Plan of Site' in its statement, which shows that, in its view, the red line on the 1978 plan included part of Field A. Whilst there appear to be some drafting errors on the approved plan, they are outside the red line and it appears to me that, on the balance of probability, the red line on the plan for the 1978 permission ended at the hedgerow between Fields A and B, thus defining a portion of Field B alone.
18. A certificate of lawful existing use, under S191 of the Act, was issued by the NPA in 2017. This was for the use of land in breach of condition 3 of the 1978 planning permission. It is common ground that the plan attached to this decision is wrong; it outlines the Rally Field. This administrative error seemingly arose from the fact that a separate certificate of existing lawful use was issued contemporaneously for that field.
19. Thus, the permissions and certificate provided the following restrictions Fields A and B in the following manner.

20. Although the description of development in the 1965 permission, and that of 1978 for that matter, merely refers to the siting of 10 caravans, it is clear to me that both permissions were also for the purposes of human habitation.
21. My attention has been drawn to established case law¹ that show that the description of development proposed in a planning application sets out what is approved, whereas conditions provide control over the approved development. In this regard, the Appellant company's assertion that the permission placed no restriction on the number and type of caravan that might be sited on the land during the defined season, nor on the nature of their occupation, is correct.
22. I do not have a copy of the report into the 1978 application, which might have clarified the area of land to which its terms applied. However, as it would not be feasible to site 45 caravans on the land in a safe and useable manner within the red line, to my mind the wording of the permission and conditions attached all indicate the permission covered the whole of the site granted permission in 1965, that is to say the whole of Fields A and B.
23. That view is supported by documents for certificate application 17/00284 that were submitted by the NPA at my request. Amongst these was a plan in which the whole of Fields A and B are outlined in red, entitled 'Plan for Application Reference 17/00284'. Although this is not the formally approved plan, which is known to be wrong, it shows that the NPA is also of the view that the certificate applied to the whole of the land. The Appellant company also agrees that the numerical condition of the 1978 permission relates to the whole of the appeal site, as the small part of Field B could not accommodate 45 caravans.
24. The description of the use on the application form for the 2017 certificate regarding the breach of condition 3 refers to "The use of Green Pastures Camping Site Main Field for 48 pitches rather than the permitted 45". The 45 pitch restriction was referred to in condition 3 of the 1978 permission, so I find that the application related solely to a breach of that condition. It also demonstrates that the 1978 permission was implemented; thus, superseding that from 1965.
25. The Appellant company suggests that the seasonal condition in the 1978 permission relates to the small area enclosed by the red line on the approved plan, whilst its numerical limitation relates to the whole of Fields A and B. The two positions are, to my mind, incompatible. I find it inconceivable, and without any evidential support, that the conditions would relate to separate areas of land in this way.
26. In the light of the above reasoning, my finding is that the land that is the subject of this appeal can lawfully be used for the siting of 48 caravans for the purposes of human habitation. This is subject to condition 2 of the 1978 permission, which restricts this use to the season March 15th to October 31st in each year.
27. In its decision on the 2017 certificate application on the land, the Council accepted that the use of the land was in breach of condition 3 of planning permission attached to the 1978 permission. The description given in the First Schedule on the certificate reflects the description of the use on the application

¹ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107,
Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC [2014] JPL 981
R (Altunkaynak) v Northamptonshire Magistrates' Court [2012] EWHC 174

- form. At no point, in the evidence I have before me, did the applicant for the certificate seek to show that condition 2 of the 1978 permission had been breached and no longer applied to the land.
28. Therefore, this condition, which provides a limitation on the period when caravans might be sited on the land for the purpose of human habitation, from March 15th to October 31st in each year, is still extant. Thus, caravans may not be sited on the land for this purpose outside that period.
 29. The question as to whether its terms and those of the 2017 certificate are enforceable has to be assessed against the evidence given by the Appellant.
 30. A site licence has been provided that shows, amongst other things, that: the site can be used for up to 45 caravans; The caravans should be sited in accordance with a plan of numbered rectangles that was attached to the original licence, this has not been forwarded to me; each of the standings for the caravans should be marked on the land; the caravans should be sited at the marked positions only; and that the caravans shall not be stationed on the site from 31 October to 15 March except at weekends between Friday and Monday and on public holidays. Thus, the seasonal limitation on the site licence and that on the 1978 permission differ. The licence allows the addition of weekends and public holidays.
 31. The main piece of evidence of a breach of the seasonal condition on the planning permission is contained in a statutory declaration made by Martine Humphray. Her family owned the site from 2011-2019 and she was thereafter retained as a member of staff at the site. I afford this declaration significant weight.
 32. She says that the site was open all year round, and “operated in accordance with the license together with a small number of caravans, normally 2/3 which were occupied all year round”. The essence of what she says is that the site was used in accordance with the licence, rather than the planning permission. She goes on to say that occupiers of the caravans included short-term holiday-makers, contractors staying for weeks or months, and a small number of residents using their caravans as their main residence for months or years at a time. She also says that the site, which has permanent infrastructure, including a toilet block and roads, has never been completely closed and she cannot recall a time when there were no caravans on site nor that it was completely unoccupied.
 33. An appeal decision at Romansleigh Holiday Park² is cited in support of the Appellant company’s position. In that case historic planning permissions contained no restrictions on the numbers of caravans that might be sited on the land. Therefore, a certificate of lawfulness under S192 was issued for an unrestricted number of caravans on the land. Similarly, there are no conditions limiting the number of caravans on the land here. However, the appeal before me seeks a certificate for the year-round stationing and occupation of caravans for the purposes of human habitation where there a seasonal restriction. This is the essential difference between it and the Romansleigh case.
 34. Further evidence, though more circumstantial, is set out in estate agent’s sales particulars for the site that have been provided. Some of the terms of the

² APP/X1118/X/20/3249504

- licence are included in these. Thus, they give an indication as to how the site was run and provide a small measure of support for what Martine Humphray says. However, they do not provide direct evidence of how the site was used.
35. Whilst evidence should not be ignored where, as here, it is uncorroborated, there is a requirement for evidence to be precise and unambiguous. The declaration provides a degree of evidence that the seasonal condition was breached by way of the siting of some caravans for human habitation outside the season.
 36. The reference to a small number of caravans, some 2-3, that were on the site and occupied all year round is relevant. Clearly, this could amount to a breach of the seasonal condition.
 37. However, I do not find that what has been said meets the precise and unambiguous test. The site licence requires each standing to be defined on site, and I saw evidence of this in the numbering of standings at my site visit. I have not been provided with any evidence of which of these standings the alleged breaches occurred on.
 38. The certificate that is sought relates to the use of the whole of Fields A and B for the year-round stationing of caravans for human habitation. The evidence does not show this to have been the case, but it does point to the likelihood that the seasonal condition has been breached on some standings, though it has not been demonstrated which ones. This is important as whilst a breach of the condition on individual standings might result them gaining immunity from the terms of the seasonal condition, this would not preclude the NPA from upholding the condition across the remainder of the site.
 39. Thus, the use that is sought through the certificate would be able to be enforced against by the NPA and this represents a further reason why the certificate should not be issued.
 40. I find that although the infrastructure of the site has been retained for an undisclosed, though considerable, period, this has not resulted in the alleged breaches rendering condition 2 of the 1978 permission unenforceable. In support of its argument on this point, the Appellant refers to *Ramsay v SSETR and Suffolk Coastal DC* [2001] EWHC Admin 277.
 41. The Appellant's argument is that what was approved in the 1978 decision, and for that matter the 1965 decision, was a temporary permission that could recur every year. I do not find this to be the case. What was granted were permanent permissions for the use of land as a caravan site for the purposes of human habitation, with the use restricted to a season by condition. This is a different matter, and thus the retention of the permanent features referred to, which one would expect to find on a caravan site, did not represent a breach of the seasonal condition.
 42. An appeal related to a caravan site at Pevensey Bay³ is also cited in this regard. In that case, the key finding of the Inspector was that, unlike here, the condition at the heart of the appeal did not impose a requirement or limitation. Had this finding been incorrect, the Inspector then went on to assess whether it had been demonstrated that the limitation had been breached for 10 years. The Inspector based her second line of reasoning, which is cited by the

³ APP/C1435/X/17/3190604 - Castle View Caravan Site, Eastbourne Road, Pevensey Bay

Appellant here, on the premise that the planning permission as a whole prevented the use of that land as a caravan site from the end of November through to the beginning of March. A condition in that permission stated "This permission shall not authorise the use of the land as a caravan site except during the period from 1st March to the 30th November inclusive each year." In that scenario, she reasoned, as infrastructure on the appeal site had been used year-round, so the site had not been vacated for more than 10 years. That case again differs from the one before me. Here, the 1978 permission does not require the cessation of the use of the caravan site, *per se*, outside the season as was found to be the case at Pevensey Bay.

43. I consider that there is not evidence to show on the balance of probability that condition 3 of the 1978 permission has been continuously breached across the site for the required period. Therefore, my finding is that save, probably, for some limited breach of condition 2 of the 1978 permission on certain unidentified plots, the NPA would still be able to enforce that condition elsewhere on the site. Thus, the application for year-round stationing and occupation of caravans for the purposes of human habitation on the site as proposed would not accord with the terms of S191(2)(a).

Conclusion

44. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the year-round stationing and occupation of caravans for the purposes of human habitation 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.

Roy Curnow

Inspector