The Planning Inspectorate

Appeal Decision

Hearing held on 13 February 2024

Site visit made on 13 February 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2024

Appeal Ref: APP/Z3825/X/22/3299073
Bluebell Park, Sumners Ponds Fishery and Campsite, Barns Green, Horsham, West Sussex RH13 0PR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Simon Smith against the decision of Horsham District Council.
- The application ref DC/20/1809, dated 18 September 2020, was refused by notice dated 2 September 2021.
- The application was made under section 192(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is: the stationing of 34 holiday static caravans for 12 month year round holiday use and no restrictions on length of stay, and in accordance with planning permission DC/05/0060.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use claimed to be lawful provided in the banner heading above is taken from the application statement. The Council confirmed this is the description it based its decision on. It was clarified that it is not claimed that there are no restrictions on the length of stay of occupants of caravans.

3. At the Hearing the Council conceded that the stationing of up to 34 static caravans at Bluebell Park for an unlimited period, occupied for non-permanent holiday purposes only, would not comprise a material change in the use of the land. It is not therefore necessary for me to identify any planning units.

Background

4. Sumners Ponds Fishery and Campsite is a former farm complex which includes agricultural land and buildings, fishing lakes, a café, and camping and caravanning areas. Bluebell Park forms part of that complex, and comprises a field with children's play area, ablutions block, warden's accommodation, and camping/caravan pitches. It benefits from 2 planning permissions: references I/5/02 (the 2002 PP) and DC/05/0060 (the 2005 PP).

5. The 2002 PP authorises development described as: 'change of use from agricultural land to camping & caravanning site', subject to 6 conditions. Conditions 2 and 3 state: 'No caravan shall be stationed on the land the subject of this application for more than 28 (consecutive) night(s) and shall only be

used solely as holiday accommodation' and 'The total number of caravans on the site shall at no time exceed 32', respectively.

6. The 2005 PP authorises development described as: 'Stationing of mobile home for warden for all year round occupation, variation of Condition 02 of planning permission I/5/02 to allow a maximum of 5 caravans to be stationed on the land for a maximum of 6 months between the months of April and September and variation of Condition 03 of planning permission I/5/02 to allow the total number of caravans to be 34', subject to 8 conditions. It is not disputed that condition 3 restricts the occupation of caravans, other than the warden's accommodation, for holiday purposes and that condition 4 limits the total number of holiday caravans to 34.

7. Condition 2 of the 2005 PP states: 'No more than five caravans shall be stationed on the land, the subject of this application, for more than six months between the months of April to September, and in addition, no more than 29 caravans shall be stationed on the land for more than 28 (consecutive) night(s)'. The reason stated for this condition is: 'To preserve the availability of the site as a touring facility, in accordance with Policy TM9 of the Horsham District Local Plan 1997'.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

9. The 2005 PP is clear, unambiguous and valid on its face. The description of the development in the decision notice refers to warden's accommodation and the variation of conditions 2 and 3 of the 2002 PP. The variation of those conditions is not development requiring planning permission. Reference to the 2002 PP and the variation of its conditions clarifies that the 2005 PP authorises the same development approved by the 2002 PP, in addition to the warden's accommodation. This is further demonstrated by condition 7 of the 2005 PP which refers to 'the camping and caravan use of the site hereby approved'.

10. There is no distinction between a planning permission which has been granted for development yet to be carried out and development which has already taken place. The 2005 PP authorises the material change of use of the land to a camping and caravanning site, even though that change of use had already taken place, subject to conditions different to those attached to the 2002 PP.

11. The text referring to the variation of condition 2 in the description of the development approved by the 2005 PP is informative. It explains how the 2005 PP was intended to differ from the 2002 PP, despite authorising the same material change of use of the land. However, it is not supported by a condition limiting a maximum of 5 caravans to be stationed on the land for a maximum period of 6 months.

12. The Council has described condition 2 of the 2005 PP as "obviously badly worded" because it does not reflect the text within the operative part of the planning permission, the development proposed in the application form, or the matters discussed in the officer report. It is suggested that any reasonable person applying a common-sense interpretation of the 2005 PP would know that condition 2 limits the length of time caravans can be stationed on the land

to 28 consecutive nights, except for up to 5 caravans which can be stationed for up to 6 months, but only between April and September. That would ignore the ability of any reasonable reader, applying common-sense, to understand what condition 2 of the 2005 PP plainly says.

13. Condition 2 of the 2005 PP comprises 2 parts: (i) up to 5 caravans can be stationed on the land for more than 6 months between April to September; and in addition (ii) up to 29 caravans can be stationed on the land for more than 28 consecutive nights. The condition therefore restricts the total number of caravans which can be stationed on the land to 34, and the length of time 5 of those caravans can be stationed on the land. This renders condition 4 of the 2005 PP redundant, but it does not mean condition 2 is imprecise, unclear or ambiguous.

14. The main parties find the first part of condition 2 ambiguous because it is not possible for any caravans to remain stationed on the land for more than 6 months if they are only permitted to remain on the land between April and September. However, the condition does not stipulate that those caravans can only be stationed on the land between those months; it requires any of the 5 caravans stationed on the land for more than 6 months (in addition to the 29 caravans stationed on the land for an unlimited period) to only be stationed on the land in excess of 6 months in the period April to September. This means the seventh and later months that those caravans are stationed on the land need to fall inside the period of April to September to comply with condition 2.

15. Condition 2 is not therefore ambiguous, even if it is badly worded and leads to odd results in the context of the application relating to the 2005 PP and the limitations the Council intended to impose. The condition is enforceable, despite the absence of any specific requirement for caravans to be removed from the land.

16. With regard to the stated reason for condition 2, it remains unclear what a 'touring facility' is. No parties have been able to provide a copy of Policy TM9 of the Horsham District Local Plan 1997, which no longer forms part of the development plan. The officer report to the 2005 PP explains that Policy TM9 encouraged the provision of new tourist facilities, which aligns with the appellant's suggestion that a touring facility is simply a facility for tourists. This view is supported by the fact that condition 3 of the 2005 PP, restricting the occupation of caravans, has the same stated reason. There is insufficient detail in everything I have read and heard to convince me that an alternative interpretation of the reason for conditions 2 and 3 would be to preserve facilities for touring caravans. Indeed, the permitted use relates to all types of caravans[1] and camping accommodation, even though approved plans indicate a touring caravan layout and seasonal pitches.

17. Condition 3 of the 2005 PP restricts the occupation of all caravans to holiday purposes only, which does not include them being used as units of permanent living accommodation. It does not set a maximum period any caravans could be occupied, but the Council would remain capable of taking enforcement action if any caravans were occupied other than for holiday purposes or as permanent living accommodation. Condition 3 is therefore enforceable and the length of stay of occupants in caravans on the land is restricted.

[1] As defined in the Caravan Sites and Control of Development Act 1960 and Caravans Sites Act 1968

18. The description of the use claimed to be lawful lacks clarity and precision on account of the text 'for 12 month year round holiday use and no restrictions on length of stay'. Notwithstanding the appellant's intention for this to refer to the length of stay of caravans, rather than occupants of caravans, it can reasonably be interpreted either way. Condition 3 of the 2005 PP restricts the length of stay of occupants, even if it does not specify a maximum period.

19. In any case, I have found that condition 2 of the 2005 PP restricts the length of stay of up to 5 caravans to 6 months between the months April to September. This limits the period those caravans could remain stationed on the land, which could only amount to a maximum of 12 months. That maximum could only be achieved where those caravans are first stationed on the land on 1 October. It is not therefore the case that 34 caravans could be stationed on the land for 12-month year-round holiday use, unless if it was specified that 5 of those caravans were to be first stationed on the land on 1 October each year and removed on or before 30 September the following year.

20. Section 193(4) of the Act allows an LDC to be issued under section 192 for some of the matters specified in the application, if not all of them are lawful. However, there are no provisions in the Act which enable me to modify or substitute the description of the use claimed to be lawful similar to those which apply under section 191. A number of interested parties have commented on the appeal and they would potentially be prejudiced if I were to seek agreement of a modified description of the proposed use from the main parties.

21. The proposed stationing of 34 holiday static caravans for 12-month year-round holiday use with no restrictions on length of stay would not comprise development requiring planning permission. However, this would be in breach of conditions 2 and 3 of the 2005 PP. The proposed use claimed to be lawful would therefore be in breach of planning control and unlawful and I am unable to grant an LDC. Given my limited powers to change the description of the proposed use, the appeal must fail. This would not prevent the appellant from submitting a new application for an LDC for a clearer and more precise description of the use proposed.

Conclusion

22. 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 stationing of 34 holiday static caravans for 12 month year round holiday use and no restrictions on length of stay, and in accordance with planning permission DC/05/0060 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rachel Rowles Davis	The appellant's agent
George Smith	The appellant's son
Harry Smith	The appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Giles Holbrook	Senior Planning Officer

DOCUMENTS SUBMITTED AT YHE HEARING

- The Council's appeal notification letter dated 13 June 2022
- Historic aerial photographs
- The application form relating to planning permission reference DC/05/0060