



Appeal Decision

Inquiry Held on 19 January 2021

by **R Satheesan BSc PGCert MSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: **APP/B1740/X/19/3229812**

Shorefield Country Park, Shorefield Road, Downton SO41 0LH

- 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 Shorefield Holidays Limited against the decision of New Forest District Council.
 - The application Ref 18/10895, dated 26 June 2018, was refused by notice dated 26 September 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the carrying out of operational development works associated with the relocation of 30 static caravans from one part of the site to another.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. Since I am not considering the planning merits of the proposal, and the appeal turns on the interpretation of the site licence, I have not undertaken a site visit on this occasion. As both parties have agreed to this approach during the Inquiry, I am satisfied that neither party would be prejudiced by this. This approach is also consistent with the guidance contained within the 'Procedural Guide Certificate of lawful use or development appeals- England November 2020'.
4. During the Inquiry both parties agreed that there is no dispute that the appeal site benefits from planning permission for a caravan site, and I have no reason to disagree. Therefore, the Inquiry focused on the interpretation of the site licence.

Main Issue

5. The main issue is whether the Council's refusal to grant the LDC was well founded.

Reasons

6. The Council confirmed that the siting of 30 static caravans on the appeal site is lawful by way of granting a Certificate of Lawfulness of a Proposed use or Development (CLOPUD)¹. This application seeks to demonstrate that the carrying out of operational development works associated with the relocation of 30 static caravans from one part of the site to another² is development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). In particular Class B of Part 5 in Schedule 2, Article 3 permits "*development required by the conditions of a site licence for the time being in force under the Caravan Sites and Control of Development Act 1960 (the 1960 Act)*".
7. However, the Council determined that that the proposal would not constitute permitted development as the land specified in the application for the licence does not include the land that forms the subject of this application. Consequently, the appeal turns on whether or not the appeal site was covered by the site licence.
8. The site licence relied on is dated 5 December 2008, and the name of the site is "Shorefield Country Park" (the Licence). Amongst other things, the Licence contains various conditions relating to the number of caravans, hard standing, roads, footpaths, and parking spaces.
9. There is no dispute between the parties that the appeal site forms part of Shorefield Country Park, and forms part of the current planning unit as Shorefield Country Park. The appellant therefore considers that the Licence covers the full site of Shorefield Country Park. In particular, the appellant highlights that no plans are referred to or incorporated into the Licence.
10. S.1(1) of the 1960 Act provides that "no occupier of land shall ... cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used."
11. S.3 of the 1960 Act provides that a licence can be obtained by application. S.3(2) states "An application under this section shall be in writing and shall specify the land in respect of which the application is made; and the applicant shall, either at the time of making the application or subsequently, give to the local authority such other information as they may reasonably require."
12. Therefore, using the ordinary meaning of the language in broad, common sense terms, the land to which the licence relates is no more and no less than what was specified by the applicant under S.3(2). Since no plan was included with the Licence, and the parties agree that there is no legal requirement for the licence to include a plan, the Council consider it is necessary to look beyond

¹ Council ref: 17/11002 dated 9 October 2017.

² Which includes the construction of hard standing, parking spaces, access roads and landscaping improvements.

the Licence itself to understand the extent of the land that was specified in the application.

13. The appellant disagrees with this approach and refers to P70.71 of the Encyclopaedia of Planning Law and Practice, "6 Interpreting planning permission" which states:

"The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions³".

"The court will not normally have regard to the relevant application for planning permission, because 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 permission and the application⁴".

14. However, P70.71 relates to "Interpreting planning permission". A site licence issued under section 3(2) of the 1960 Act is a separate and distinct matter from a planning permission granted under the 1990 Act. As such, since the statutory regime is different, the law in relation to the circumstances in which a planning permission can be interpreted by reference to the planning application material is not relevant.
15. Similarly, the point raised by Mr Simons during the cross examination of Mr Jim Bennett, that the application material supporting a site licence under s.3(2) of the 1960 Act is not on the planning register, is not relevant, given that the 1960 Act is not planning legislation. I therefore agree with the Council that there is no reason why it should be. Indeed, should anyone seek to view the Licence application material, they need only write to the Council, as noted by Mr Jim Bennett in re-examination.
16. The appellant also cites reference to the Town and Country Planning (Development Management Procedure) (England) Order 2015 with regards to the requirements for planning applications. However, no substantive evidence nor authority has been advanced to support the appellant's contention that the requirements for planning applications and the principles which apply to interpreting a planning permission under the 1990 Act should equally apply to the different context of the 1960 Act.
17. Even if the case-law relating to the interpretation of planning permissions was relevant, it would allow reference to the application material because the Licence in the present case is ambiguous. This is illustrated by the fact that the appellant has to read in the concept of the "planning unit" which is not referred

³ *Miller-Mead v Minister of Housing and Local Government [1963] 2 Q.B. 196; Slough Borough Council v Secretary of State for the Environment [1995] J.P.L. 1128, and R. v Ashford Borough Council, Ex p. Shepway District Council [1998] J.P.L. 1073; [1999] P.L.C.R. 12.*

⁴ *see, e.g. Kent v Guildford Rural District Council (1959) 11 P. & C.R. 255; Wilson v West Sussex County Council [1963] 2 Q.B. 764; Slough Estates Ltd v Slough Borough Council [1971] A.C. 958; Slough Borough Council v Secretary of State for the Environment [1995] J.P.L. 1128 Clywd County Council v Secretary of State for Wales [1982] J.P.L. 696; Kuxhays v Secretary of State for the Environment [1986] J.P.L. 675; Springfield Minerals Ltd v Secretary of State for Wales (1995) 72 P & C.R. 70; R. v Ashford Borough Council, Ex p. Shepway District Council ([1998] J.P.L. 1073); R. (on the application of Bleaklow Industries v Secretary of State for Communities and Local Government [2009] EWCA Civ 206; Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476 (curtilage); and Polhill Garden Centre Ltd v Secretary of State for the Environment (25 June 1998; Malcolm Spence, QC sitting as Deputy Judge).*

- to expressly in the licence. Furthermore, the Licence neither expressly includes nor excludes the appeal site. The term "Shorefield Country Park" is also not a term used in the planning document to which the Appellant states defines the "planning unit" namely the 2007 certificate of lawfulness⁵, which describes the site address as "Land at West Road, Milford on Sea, Hampshire".
18. For the above reasons, the appellant's contention to not rely on the Licence application correspondence is based upon a legal proposition which does not appear to be supported in law and even if legally correct would fail to assist on the facts of this particular case. As such, it is necessary to look to the application material to understand what was "specified" under s.3(2) as the land to which the application relates and therefore what land the licence relates to.
 19. With regards to the application material, the correspondence between the parties is clear that it was agreed that the applicant would submit a plan "*showing the boundaries of the park being used for caravans*"⁶. This point was accepted in Mr Adam Bennett's cross examination. Following this, plans were submitted by letter⁷ showing the areas for the caravan sites. There is also a clear intention expressed in the first paragraph of this letter that the "*caravan sites*" to which the licence was to apply were the areas "*edged red*" and that the licence would thus not apply to the areas edged blue. The appeal site lies outside of the areas edged red.
 20. The second and third paragraphs, dealing with numbers, clearly outlines that the 588 caravans to be licensed were to be on the caravan sites to be amalgamated under the licence namely "*Shorefield*", "*Sea Breeze*" and "*Woodland View*" (i.e. the 3 areas edged in red on the plans).
 21. During the Inquiry there was some discussion regarding whether other parts of the overall site, (e.g. Danes Park) which were edged in blue on the December 2006 plans, were also to be included in the caravan site licence area. From my reading of the correspondence mentioned above and the plans, it is clear that the area edged in blue was not to be covered by the licence. This is because the areas edged in blue are described as "*chalet parks*" and, as Mr Adam Bennett agreed in cross examination this letter clearly distinguishes between the chalet parks and the caravan sites, because the chalets are not regarded as caravans in this instance, and therefore outside the scope of caravan licensing.
 22. Before the Licence was issued, a further letter from HL Humberts Leisure to the Council⁸ confirmed that "*the licence plan should be the plan sent to you on 12 December 2006, with the various caravan parks shown edged red*". Prior to this, correspondence from the applicant to the Council confirms that "the name suggested to embrace all the individual parks under one heading should be titled "*Shorefield Country Park*"⁹". It is therefore clear that for the purposes of the licence application, the term "*Shorefield Country Park*" was used to refer to

⁵ Council ref: 07/89582 approved on 30 April 2007.

⁶ Appendix BS03 and BS04 of Ben Stockley's Proof of Evidence: Two letters from HL Humberts Leisure to New Forest District Council dated 19 September 2006 and 31 October 2006 respectively.

⁷ Appendix BS05 of Ben Stockley's Proof of Evidence – Correspondence from HL Humberts dated 12 December 2006; BS06 & BS07 – Site Plan Parts 1 & 2 dated 12 December 2006

⁸ Dated 17 April 2008 (Appendix BS09 of Ben Stockley's Proof of Evidence).

⁹ Appendix BS08 of Ben Stockley's Proof of Evidence: Correspondence from Shorefield dated 28 February 2008.

the caravan parks which the applicant had specified were the subject of the application, namely those edged red in the plans.

23. Therefore, the application material is unequivocal to the common intention of the applicant and the Council in relation to the application and the subsequent Licence. When returning to the question posed by the 1960 Act, what was "specified" under s.3(2) as the land to which the application related, the answer is: the 3 areas edged in red on the December 2006 plans, which were referred to for the purposes of the licence application as "*Shorefield Country Park*", the same name later used in the Licence.
24. Prior to the Inquiry the appellant submitted late evidence comprising a draft Site Licence at New Forest Lodge Retreat. However, this relates to a different application at a different site and post-dates the licence issue in the present appeal case by approximately 12 years. Furthermore, it is in draft form which further limits the weight I can attribute to this document. Whilst I acknowledge that the Licence the subject of this appeal would have been clearer had the licence appended the December 2006 plan, it does not mean that the applicant obtained consent over a greater area of land than it had specified in the application. It simply means that one has to look beyond the licence to the application material itself to understand what was specified under s. 3(2).
25. Accordingly, the appeal site does not fall within the scope of the Licence. Thus, conditions attached to the Licence cannot apply to the Land, and therefore cannot require any development on the Land which would fall within the GDPO. It is therefore necessary for the appellant to obtain a licence over the appeal site pursuant to the 1960 Act before seeking to rely on the GPDO to carry out the operational development works.

Conclusion

26. For the above reasons, I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the carrying out of operational development works associated with the relocation of 30 static caravans from one part of the site to another was well-founded, and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Zack Simons of Counsel, instructed by Adam Bennett of Ken Parke Planning Consultants Ltd.

He called Simon Gerald Pollock, Chairman and Managing Director of Shorefield Holidays Ltd.

Adam Bennett BA(Hons), Town Planning Consultant at Ken Parke Planning Consultants Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Charles Banner QC, instructed by Amanda Wilson, Legal Services Department, New Forest District Council.

He called: Ben Stockley MCIEH, Food and Safety Team Manager for New Forest District Council.

Jim Bennett MTP, MRTPI, Senior Planning Officer for New Forest District Council.

INTERESTED PERSONS:

Christopher Seward Neighbouring resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Email from Adam Bennett dated 18 January 2021 containing:
ABP9 – Mr Ben Stockley email to Mr Simon Pollock dated 11th December 2020
ABP10 – Draft Licence Front Page relating to New Forest Lodge Retreat
ABP11 – Draft Licence Conditions relating to New Forest Lodge Retreat
- 2 Appellant's opening submissions
- 3 Council's opening submissions
- 4 Council's closing submissions
- 5 Appellant's closing submissions