



Appeal Decision

Inquiry held and site visit made on
8 January 2008

by **B Barnett BA MCD MRTPI**

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

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Decision date:
31st January 2008

Appeal Ref: APP/H0738/X/07/2045702

Leven caravan site, Low Lane, High Leven, Yarm, TS15 9JT

- 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.
- The appeal is made by Mr E Ward against the decision of Stockton-on-Tees Borough Council.
- The application Ref 07/0865/CPE, dated 16 March 2007, was refused by notice dated 14 May 2007.
- 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 as a caravan site for residential purposes for up to 80 caravans.

Summary of decision: The appeal is dismissed

Preliminary matters

1. At the inquiry the Council and the appellant agreed that the appeal should be dealt with on the basis that it relates to a proposed use for the stationing of 80 caravans for residential purposes unrestricted by seasonal occupation or other limitations. I have proceeded accordingly.
2. S195 of the Town and Country Planning Act 1990 requires me to dismiss the appeal if I am satisfied that the Council's refusal of a certificate was well founded. However, S196 provides for the holding of an inquiry where the parties have a right to be heard. In determining whether the Council's decision was well founded, I must take into account all evidence before me at the inquiry even though some of it was not in front of the Council at the time of its decision.
3. In 2005 a letter from the Council to a Mr Da Silva advised that 'planning permission will not be required to reopen the site as specified in the original permission granted in 1961'. I have attached little weight to this expression of opinion. The appellant accepts that it is not binding on the Council and, in response to the subsequent application, the Council decided to refuse a certificate.
4. Evidence at the inquiry was given under oath or affirmation.

The site and its previous use

5. The appeal site slopes quite steeply up from the nearby river but there are level areas, particularly at what was referred to at the inquiry as 'the car park' and in numerous other places where small terraces have been created. A
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public footpath runs through the middle of it. This is evidently well used by pedestrians but I saw no evidence of its recent use by vehicles. Such use would be difficult because of its condition. Most of the site is densely vegetated with trees and bushes. However, throughout the area there are remnants of buildings and some derelict buildings. In and adjacent to the car park area I saw three derelict caravans and a number of derelict vehicles and parts of vehicles, including an old fire engine and what may have been a showman's residential trailer. There was a largely intact brick building which, I was told, is a toilet block, but due to the state of the ground and the vegetation, I was unable to see inside this. A few metres up the footpath from the car park there was a further derelict caravan.

6. Many years ago the site was developed as a holiday destination. Plots were rented out on which people built chalets in which to spend holiday and leisure time. It was bought by a Mr Boal in 1960 at which time there were about 46 chalets present. He moved a caravan onto the land as his home. In February 1961 he obtained planning permission for what the decision notice describes as 'proposed development for the purposes of site for 80 seasonal chalets and caravans'. This permission was subject to three conditions:
 1. a minimum of 20 sites shall be reserved for touring caravans;
 2. detailed plans of any proposed buildings (including building materials) and/or details of any overhead electricity lines shall be submitted to and approved by the local planning authority before the development is commenced; and
 3. the site shall only be used during the period 1st March to 31st October in each year.
7. In 1962 he obtained planning permission for the stationing of a residential caravan on the land subject to a condition that it be occupied only by him and his immediate family and in 1964 planning permission was granted for 'use of an approved residential caravan by a caretaker of the caravan site'. It was agreed at the inquiry that both these permissions related to the caravan brought onto the site initially as his home by Mr Boal, notwithstanding that its precise location may not have been as shown on the plan accompanying the applications.
8. Although witness statements by Mr and Mrs Boal refer to there being two caravans there when he bought the land, Mr Boal's evidence at the inquiry referred to only one and a photograph, apparently taken about 1962, showed only one. It seems likely that around this time the only caravan on the site was that referred to in the 1962 and 1964 permissions. These permissions appear to have been granted on the basis that someone needed to live in a caravan in order to look after either the existing chalets or the proposed caravans or both.
9. About 1962 Mr and Mrs Boal moved to a house and someone else moved into their caravan as 'caretaker' of the site. Mrs Boal's witness statement claims that 'a short time later more caravans moved onto the site', but gives no information about how many or when this occurred.
10. There is no direct documentary evidence of additional caravans before 2003 when a Council tax bill refers to 'Plot 4', suggesting that three other plots may

have been recognised for taxation purposes. The application which led to the 1962 permission described the land as a 'holiday caravan site'. However, as a description of the existing use this was clearly inaccurate as the accommodation then present comprised chalets not caravans, save for that occupied by the site owner on a permanent residential basis and for which he later obtained a separate planning permission. Either it used the term 'caravan' extremely loosely to include chalets, or it referred to the intention to convert the site over time into a caravan, rather than a chalet, site. Either way, it does not show that other caravans were present at the time. For much the same reason, references to the land as a caravan site in the officers' reports in relation to the 1962 and 1964 permissions are unhelpful.

11. In 1964 planning permission was given for 'the provision of campsite toilets'. This may relate to the toilet block still present on the site, but it does not indicate the presence of caravans. A toilet block may well have been provided to serve the chalet residents.
12. Submission of the application which led to the 1960 permission does not indicate that there was already such a caravan site use in existence. Mr Boal's evidence at the inquiry is that at that time there were about 46 chalets and only one caravan on the land. The permission clearly refers to proposed development. The licence granted in connection with it is likely also to have related to a proposed caravan site.
13. Direct evidence as to the actual use of the site was given at the inquiry by Mr Boal. One residential caravan there continued to be occupied by the caretaker until December 2001 when he went into hospital. A Mrs Hart occupied another continuously from 1980 until 2000, although her arrival might have been in the 1970's. No caravans have been lived in on the site since December 2001.

Reasoning

14. The main issue before me is whether the 1961 planning permission was lawfully implemented in relation to use of the land as a caravan site.
15. There is no condition on the permission requiring implementation by a certain date. However, Schedule 24 of the Town and Country Planning Act 1971 has the effect that the permission lapsed if it was not implemented by 1 April 1974. In assessing whether or not this occurred, the element of the permission relating to use as a caravan site must be considered separately from that dealing with the chalets. These two elements are clearly severable as there were chalets on the site well before any caravans were present. Indeed the chalets appear to have predated the 1961 permission and, in respect of them, the permission largely legitimised what already existed. No suggestion was made at the inquiry that the presence of chalets on the site in 1961 comprised implementation of the permission insofar as it related to use as a caravan site.
16. The 1961 permission did not authorise use of the land to station the caravan which was present at that time. This was, from the start, a permanent residential caravan and condition 3 of the permission excludes use of the land for that purpose. The presence of this caravan on the site did not amount to implementation of the 1961 permission but was authorised by the 1962 and 1964 permissions.

17. Although Mr Boal indicated that Mrs Hart's caravan may have been brought onto the land in the 1970's, he was uncertain on this point and it seems unlikely that it arrived before 1 April 1974.
18. Evidence that the Boals had a caravan on the site at some time, other than the one in which they initially lived, is not disputed. There is no precise evidence as to when they placed it on the land for their use, but Mr Boal stated that it was there in 1964. His answers were at times somewhat vague and his evidence lacked precision. However, it seems to me unlikely that he would have erred by as much as 10 years in his recollection of events directly related to his family. In the absence of evidence to the contrary, I conclude that this caravan was probably brought onto the site before 1 April 1974.
19. Evidence in relation to other caravans is far from clear. As indicated above there is no significant documentary evidence. Mrs Boal indicated that a short time after 1960 more caravans were moved onto the site. However, the written evidence of both Mr and Mrs Boal as to the number of caravans on the site when they bought it was contradicted by Mr Boal in evidence at the inquiry and this throws into doubt the accuracy of other information provided. Mr Boal's recollection of events and dates was imprecise, and his statement that each year from 1964 until 2000 there were four caravans on the site appears inconsistent with his recollection of only three brief periods in the twenty years from 1980 to 1999 when people other than himself, the caretaker and Mrs Hart had a caravan there. A ledger recording details of people using the site apparently exists, but was not produced. In my judgement, it has not been shown that, on the balance of probability, there were other caravans on the site before 1 April 1974.
20. The placing of a second caravan on the site by the Boals for their personal use might have been sufficient to implement the planning permission. However, the development permitted in 1961 was for 'seasonal chalets and caravans' and condition 3 expressly sought to ensure that the site could only be used in a seasonal manner. I do not accept the appellant's argument that this condition is imprecise and unenforceable. It is clearly intended to restrict the period when the chalets and the caravans can be lived in. The stated reason for imposing it was 'to ensure that the site does not become residential'. It defined and went to the heart of the permission. The judgement in *R (on the application of Hart Aggregates Ltd) v Hartlepool BC 2005* made it clear that failure to comply with a condition which goes to the heart of a planning permission means that the entire development must be regarded as unlawful.
21. Mr Boal stated that he visited this second caravan daily and slept there occasionally. Mrs Boal described it as a 'permanent' caravan and stated that from early 1963 her family spent all weekends and school holidays at the camp. This seems to indicate that use of this caravan was not seasonal. There is no evidence that it ever complied with condition 3 of the 1961 permission.
22. Even if, as is claimed, there were other caravans on the site before 1 April 1974, there is nothing to indicate that use of the land for that purpose was confined to the period 1 March to 31 October.
23. It has not been shown that, on the balance of probability, the use of the site prior to 1 April 1974 for the stationing of a caravan, in addition to the one

permitted in 1962 and 1964, was ever consistent with condition 3 of the 1961 planning permission. The limited information available suggests that it probably was not. On the evidence available to me, it is probable that the change of use which occurred when additional caravans were brought onto the land did not comply with the terms of, and was not authorised by, the 1961 planning permission. It was different development.

24. I conclude it has not been shown that the 1961 planning permission was ever implemented in relation to use of the land as a caravan site. It probably lapsed in 1974 and, that being so, it cannot now be relied on to implement the development referred to in the application.
25. It seems likely that two caravans on the site were lived in continuously for many years prior to 2002. However, there is no need for me to decide whether any previous use has become lawful through the passage of time, or whether abandonment occurred when residential occupation ceased in December 2001. It is clear from the evidence of Mr Boal that at no time has the site ever held more than 6 caravans. Use of it now for the stationing of 80 caravans would completely alter the character of the land, requiring removal of much of the vegetation and the introduction of extensive roadways and hardstandings and leading to a massive increase in the amount of activity taking place there. As a matter of fact and degree, it would involve a material change of use for which there is no planning permission.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of Leven caravan site, Low Lane, High Leven, Yarm, TS15 9JT as a caravan site for residential purposes for up to 80 caravans 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.

Formal Decision

27. I dismiss the appeal.

B Barnett

INSPECTOR

