Appeal Decision

Site visit made on 20 July 2009

by David Pinner BSc (Hons) DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
27 July 2009

Appeal Ref: APP/H0738/X/07/2045702
Leven Caravan Site, Low Lane, High Leven, 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 (LDC).
- The appeal is made by 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 the use of the land as a caravan site for up to 80 caravans.
- This decision supersedes that issued on 31 January 2008. That decision on the appeal was quashed by order of the High Court.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the extent of the proposed use which I consider to be lawful.

Preliminary matters

2. I note that the previous Inspector established at the original public inquiry into this appeal that both the Council and the appellant agreed that the appeal should be dealt with on the basis that it relates to a proposal to use the land as a caravan site for up to 80 caravans for residential purposes unrestricted by seasonal occupation or other limitations. It is clear that the appeal turns on matters concerning a planning permission granted with conditions in 1961 for the use of the land as a site for 80 seasonal chalets and caravans. The site is no longer in active use as such, so, if the 1961 permission remains extant, no breach of its conditions is taking place and there is no question of the site having a use which is not restricted by the conditions of that permission. A certificate could not be issued in the terms established at the inquiry by the previous Inspector. I have therefore considered the appeal on the basis of the original description of the proposed use.

Reasons

3. The appeal site is a steeply sloping, heavily wooded area of land within which there are the very sparse remains of various unrecognisable structures. The site is adjoined by relatively recent housing development and I can fully appreciate that local residents have concerns about the proposed use of the

land as a site for up to 80 caravans. Nevertheless, this appeal is not about the planning merits of such use, so the suitability of the site in terms of its topography, tree cover, access, location, landscape value or even the practicality of its proposed use are irrelevant to the matter I have to consider. Similarly, current development plan policies have no bearing on my decision.

4. The decision turns on various points of planning law; in particular, whether a planning permission, Ref:3/3/2863 granted on 1 February 1961 by the North Riding of Yorkshire County Council No.3 Planning Area, (the 1961 permission) for the use of the land as a site for 80 seasonal chalets and caravans was implemented and, if so whether that permission remains effective.

5. The history of the site is included in a statutory declaration made on 25 October 2006 by Bernard Boal, who had owned the site since 18 July 1960. He explains that the site had been in use as a camping caravan and chalet park since the First World War. When he bought the land, he recalls that there were about 40 chalets and two caravans on it, with room for more.

6. In a letter dated 9 October 2006, Mr Boal explained that the previous owners sold the site to him because they were not prepared to spend thousands of pounds to bring it up to the required standard of the Caravan Sites and Control of Development Act 1960 (The 1960 Act).

7. Under the terms of the 1960 Act, land could not generally be used as a caravan site for human habitation unless a site licence had been issued by the local authority for its use as such. In order for a site licence to be issued, it was a prerequisite that planning permission for the use of the land as a caravan site had been granted. The 1961 planning permission was obtained to satisfy this requirement and a site licence under the 1960 Act was obtained very soon afterwards on 14 March 1961. Subsequently, other planning permissions were granted relating to the provision of toilet and septic tank facilities and for the stationing of a permanent residential caravan. That permission was limited by a condition that made it personal to Mr Boal and his immediate family. In December 1964, a further planning permission was granted for the use of this permanent caravan by a caretaker of the caravan site.

8. The previous Inspector sought to make a distinction between the use of the site for providing holiday accommodation in chalets and its use as a caravan site. He concluded that these were, in effect, two separate developments and that the planning permission was severable. Although he was satisfied that the holiday chalet element of the planning permission had been implemented (he regarded that aspect of it as being mainly retrospective), he was not satisfied from the evidence that the land had been used as a caravan site. However, the challenge to his decision was successful on the grounds that there is no sound basis in planning law to suggest that different elements of a single planning permission are to be treated as severable for the purposes of implementation. He therefore erred in concluding that the 1961 planning permission was severable.

9. For my own part, I have serious doubts about whether the 1961 permission can be construed as containing two separate elements (chalets and caravans) in any case. Condition 1 of the 1961 permission required that at least 20 of

the sites be reserved for touring caravans, but otherwise no distinction is made between chalets and caravans.

10. The word "chalet" has no specific meaning in planning terms whereas "caravan" is defined in s29(1) of the 1960 Act as being any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed or transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted".

11. These days, what are often referred to as chalets, or even log cabins, are in fact twin-unit caravans brought onto site in two parts and bolted together once in place. Once assembled and surrounded with decking, as is common practice, they look nothing like what most people would regard as a caravan but they nevertheless fall within the definition of caravan for the purposes of the 1960 Act. This is not new. For example, in times gone by, it was very common for old railway carriage bodies to be sold off and used for other purposes, including use as holiday homes. Such carriage bodies, once fitted out for human habitation, would satisfy the definition of caravan in the 1960 Act, as would old buses and tramcar bodies so adapted.

12. A newspaper article dated 24 April 1999 supplied as part of the evidence takes a nostalgic look at the popularity of Leven Bridge as a holiday destination for people from Teesside in the 1940s and before. The article mentions a collection of "more than 30 huts, bungalows or chalets – call them what you will" at Leven Bank and notes that lower down, "a smaller collection of old double decker buses and tramcars served the same purpose". The article includes an undated photograph of what appears to be part of the appeal site showing a collection of wooden chalets. It is not clear whether the buses and tramcars were on the appeal site, so I will assume they were on another site. Nevertheless, the reference to them does illustrate that a variety of structures was used for providing the holiday accommodation in the area.

13. There can be no doubt that the site had a long-standing use for the provision of holiday accommodation before the 1960 Act came into force. It seems that the predominant (and maybe only) type of accommodation was in what are termed "chalets". However, it is by no means a stretch of the imagination to take the view that at least some of what were described as huts, bungalows or chalets would, in fact, have been regarded as caravans for the purposes of the 1960 Act. It is clear that in 1960 the local authority, the previous owner of the land and Mr Boal all considered that a site licence under the 1960 Act was required if the use were to continue and that investment in facilities would be required. That is a strong indication that at least some of the chalets met the definition of a caravan, or alternatively, that caravans were also accommodated on the site. The site licence that was granted set spacing standards for the chalets, which is a further indication that they were regarded as caravans for the purposes of the Act and possibly that they were capable of being moved to achieve the necessary spacing.

14. The planning permission necessary to obtain a site licence was granted; facilities required by the site licence were provided and planning permission was granted for the building needed to provide those facilities, in compliance with condition 2 of the 1961 permission, which required detailed plans of any proposed buildings to be submitted to and approved by the local planning

authority before the development commenced. It is also clear from the evidence that the site continued to provide holiday accommodation after those facilities were provided. The officers' report on Mr Boal's planning application for a residential caravan refers to the site as being "the holiday caravan site at Leven Bridge". That implies that whoever the report was intended for would be familiar with the site and no further explanation was necessary. The 1964 permission that allowed the same caravan to be used by a caretaker, refers to the caravan site in the description of the development that was permitted and also in the officer's report, which describes it as "this large caravan site". For these reasons, I am in no doubt that the 1961 planning permission was implemented and that the land was regarded as a caravan site by the appropriate authorities. There is no suggestion that the authorities were not competent and, in my view, it would be wrong to conclude, nearly half a century later and based on limited information, that they had been in error in that regard.

Abandonment

15. Following a period of decline, the land is no longer in active use as a caravan site. All the structures on it have either been removed or destroyed, fallen into dereliction or otherwise disappeared into the dense woodland and undergrowth on the land. The Council's view is that the use has been abandoned.

16. Section 75(1) of the Town and Country Planning Act 1990 says that any grant of planning permission to develop land enures for the benefit of the land and of all persons for the time being interested in it. In simple terms, once granted, a planning permission lasts forever. However, there are other provisions in the Act which enable a planning permission to be revoked.

17. There is a big difference between lawful uses that do not have planning permission (e.g. uses that existed before the Town and Country Planning Act 1947 came into force) and uses that do have planning permission. The former may be abandoned, and there is case law to assist in determining how that might come about, but the latter always have the benefit of the planning permission to fall back on after a period of disuse. I accept that that is a simplification of the situation because the Courts have held that a planning permission for a straightforward material change of use is complete upon the change having been made. The permission is therefore spent and cannot be relied upon to authorise the change of use again *(Cynon Valley v Secretary of State for Wales [1986] JPL 760)*. However, the circumstances where this applies are when there has been a subsequent permitted or lawful change to another use, which is not the case here.

18. In this case, the use permitted by the 1961 permission has simply dwindled away such that it is now very many years since there was any appreciable use as a caravan site. Nevertheless, the 1961 planning permission was implemented, it has not been revoked and it has not been superseded by the use of the site for a different permitted or lawful purpose. The permission may therefore be relied upon for the use of the land as a caravan site for up to 80 caravans, subject to the use being undertaken in accordance with the 1971 permission.

Conclusions

19. I conclude that the use of the land as site for up to 80 caravans would be lawful, but only insofar as it would be undertaken in accordance with the1961 planning permission. I shall grant a certificate of lawfulness in those terms.

David C Pinner

Inspector

Lawful Development Certificate

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 16 March 2007 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission was granted with conditions by North Riding County Council No.3 Planning Area on 1 February 1961 for the use of the land as a site for 80 seasonal chalets and caravans. S75 of the Act provides that any planning permission enures for the benefit of the land and of all persons for the time being interested in it. The use of the land as a caravan site, although no longer taking place, has not been superseded by any other lawful or permitted use of the land. The 1961 planning permission remains effective and can be relied upon for the proposed use of the land, but only insofar as that use is undertaken in accordance with the terms of the 1961 planning permission.

Signed: *David C Pinner*

Inspector

Date: 27th July ,2009.

Reference: APP/H0738/X/07/2045702

First Schedule

Use of the land as a site for up to 80 caravans

Second Schedule

Land at Leven Caravan Site, Low Lane, High Leven, TS15 9JT

IMPORTANT NOTES – SEE OVER

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.