IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
[2024] EWHC 1334 (Admin)

No. AC-2O23-LON-003836

Royal Courts of Justice

Thursday, 9 May 2024

Before:

MRS JUSTICE LANG DBE

B E T W E E N :

ROSS PARK HOMES LIMITED — Claimant

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) TEIGNBRIDGE DISTRICT COUNCIL

Defendants

MR M RUDD (instructed by Stephens Scown LLP) appeared on behalf of the Claimant.

MR B DU FEU (instructed by Government Legal Department) appeared on behalf of the First Defendant.
The Second Defendant did not appear and was not represented

J U D G M E N T

MRS JUSTICE LANG:

1 This is a renewed application for permission to apply for planning statutory review, under Section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision by the first defendant's inspector, dated 20 November 2023, to dismiss the claimant's appeal against the second defendant's (the Council's) refusal to grant a certificate of lawfulness of proposed use or development ("LDC") relating to a proposed use of land at Ross Park, Caravan Park, Moore Rd, Ipplepen, Newton Abbot, Devon.

2 Permission was refused on the papers on 13 February 2024 by HHJ Jarman KC, sitting as Judge of the High Court.

3 The claimant applied for an LDC on 19 April 2022 for a proposed use of the site for the siting of touring caravans throughout the year, which may be occupied for human habitation of any type, including as a person's sole or main place of residence.

4 The Council failed to determine the application in time and the claimant appealed under Section 195, TCPA 1990.

5 The main issue in the appeal was summarised by the Inspector in paras.7 and 8 of the decision letter brackets ("DL[7-8]") which read as follows:

> "7. Ross Park is an established caravan park for which planning permission was granted in 1991 ('the 1991 Permission') The appeal site is the central area of the caravan park and is part of the same overall planning unit. It is common ground that the Appeal Site has planning permission for use by touring caravans; that there is no longer any condition governing the number of caravans permitted; and that as a consequence of the LDC granted in 2022, there is no longer any restriction on touring caravans remaining on the appeal site outside the period from April to September. The dispute between the parties relates to the manner in which such caravans may be occupied.
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> "8. The main issue for this appeal, then, is whether or not the proposed use of touring caravans for any type of occupation, including as a person's sole or main place of residence, falls within the existing lawful use of the appeal site. If it does, the LDC should be granted."

6 The Inspector analysed the planning permissions at the site. She considered the various changes to the conditions over the years and the decision of Inspector Jarrett on 16 March 2022 granting a LDC. She concluded:

> "19. In my judgement, then, the existing lawful use of the appeal site is a site for touring caravans where transient visitors occupy their caravans (or camping tents) for leisure purposes. The development proposed by the current LDC application would be a change from that use and that it would encompass the year-round residential occupation of caravans as places of sole or main residence...

> "20. ... What is at issue is whether there would be a change in the character of the existing use.
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> "21. The proposed use has to be compared with the present use ... There is no evidence that any touring caravans on the appeal site are occupied as sole or main places of residence ... There would be a materially different level and pattern of traffic movements if the touring caravans were to be occupied for permanent residential use. It is likely there would also be changes to character and appearance of the appeal site.
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> "22. ... There is therefore a strong possibility that occupation of the touring caravans as sole or main places of residence ... would result in a material change of use ... That being the case, I cannot be satisfied on the balance of probabilities that the proposed use would fall within existing lawful use of the appeal site. The LDC cannot therefore be issued."

7 I refer to the statutory scheme and the authorities which are helpfully set out in both parties' skeleton arguments.

Grounds 1 and 2

8 On ground 1, the claimant submits that the Inspector erred in her interpretation of the governing permission by finding that the term "touring caravan" involved a seasonal use, a leisure use and a transient use. No such restrictions were to be found in the conditions and permissions that apply to the relevant date. These were caravans which fell within the broad statutory definition of "caravan" in section 29(1) of the Caravan Sites and Control Development Act 1960.

9 On ground 2 the claimant submits that the inspector's reasons were neither adequate nor intelligible.

10 In my view grounds 1 and 2 are unarguable and have no realistic prospect of success, for the reasons given by the first defendant.

11 The Supreme Court in *Trump International Golf Club Limited v Scottish Ministers* [2016] 1 WLR 85 and *London Borough of Lambeth v Secretary of State* [2019] 1 WLR 4317 set out the principles to be applied to interpretation based upon the approach of the "reasonable reader".

12 In *London Borough of Lambeth* Lord Carnwath, at [16], cited with approval Lord Hodge's judgment in *Trump International* at [34]:

> "34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense."

13 Lord Carnwath added at [19]:

> "19. In summary, whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find 'the natural and ordinary meaning' of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense."

14 On my reading of the DL, the Inspector's approach was consistent with these authorities. She addressed the claimant's submission, relying upon *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government & Anor* [2014] EWHC 1138 (Admin), namely that in the absence of any condition governing how the caravans may be occupied, they could be lawfully used for any type of human habitation, including full-time residence. The Inspector correctly identified the legal principles to be applied at DL[14-15] where she stated:

> "14. In support of this contention, the appellant has drawn my attention to the High Court's judgment in *Cotswold Grange* where it was held that generally the only things which are effectively prohibited by grant of planning permission are those things that are the subject of a condition. That proposition is, of course sound but a more recent relevant judgment was handed down by the Appeal Court in *Barton Park Estates Limited*. Lindblom LJ held that the absence of the condition specifically restricting (in that case) the number of residential caravans on the site:
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> > '... does not have the effect of altering the description of development in the grant itself. It does not change what the planning permission is actually for. The permission is for the development described in the brief particulars restricted by the conditions….. It is not for some other proposal, formulated in different terms from the grant."
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> "15. The *Barton Park Estates Limited* judgment also refers to the Appeal Court's earlier judgment in *Winchester* where'Sullivan LJ said:
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> > 'It is possible that the use of the word "limitation" in the judgment has contributed to the misunderstanding of the effect of the *I'm Your Man* line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission.'"

15 Applying these principles to this permission, the Inspector emphasised the use of the term "touring caravan" in its context in the 1991 Permission and the following permissions,

which must be distinguished from a general grant of permission for caravans or for a caravan site. The reasonable reader would understand the natural ordinary meaning of a "touring caravan" to be a caravan designed to be readily movable from site to site, providing its occupiers with temporary accommodation for leisure purposes.

16 It is clear from the DL that the Inspector had the plan and history of the Site well in mind, in particular, the fact that previous conditions relating to seasonal use and limits on the duration of stays were no longer operative. Her use of the term "seasonal" was used appropriately when she was considering the earlier period when a seasonal condition was in force. Her use of the terms "transient" and "leisure" stemmed from her interpretation of the term "touring caravan" in the context of this permission. She addressed the effect of the 2022 LDC, which I consider under ground 3. It is important to note here that the 1991 description of development, namely "touring caravans", not caravans in general, was repeated in the subsequent permissions.

17 Applying the test in *Trump* and *Lambeth*, the Inspector was entitled to conclude at DL[19] that the existing lawful use was as a site for touring caravans where transient visitors occupy their caravans for leisure purposes, not for permanent residence. The Inspector was not asked to consider the existing lawful use on other sites where the claimant alleges that touring caravans are being used to house workers.

18 The Inspector's reasoning clearly outlined the test in *South Bucks District Council & Anor v Porter (No. 2*) [2004] 1 WLR 1953, per Lord Brown at [36]. Her reasons were intelligible, adequate and addressed the principal important controversial issues.

Ground 3

19 On ground three, the claimant submits that the Inspector failed to have proper regard to the effect of the 2022 LDC, which confirmed that condition 2 to the 1994 Permission and condition 3 to the 1996 Permission, which restricted use to one month other than during the period April to September, were no longer enforceable. The claimant also submits that the Inspector failed to give adequate reasons for her conclusions.

20 In my view, this ground is unarguable and has no realistic prospect of success. The Inspector expressly had regard to the effect of the 2022 LDC. At DL[13] she observed that its effect was that the Council could not now take enforcement action against touring caravans remaining on the site all year round. Applying the guidance in *Barton Park* she held, at DL[16 -18]:

> "16. In this case by operation of 2022 LDC conditions which restricted the amount of time for (and periods during) which touring grounds to remain on the site no longer apply, but it does not necessarily follow that there is no planning control over how they may be occupied. The terms of the 1991 Permission cannot simply be disregarded.
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> "17. The Inspector's decision on the 2022 LDC refers to a Statutory Declaration given in evidence for the Appellant. It explained that every winter, some of the caravans of customers who rented seasonal pitches were left on their pitches for the duration of the winter. There was no point in moving them into caravan storage areas at the caravan park as there was insufficient demand during the winter months for the caravan pitches.

> "18. In considering the interpretation of the relevant conditions, the Inspector held that 'remain' cannot be interpreted to mean 'occupied'. I agree with that finding. An unoccupied touring caravan left on a seasonal pitch that would otherwise be unused over winter is not at all the same thing as a caravan that has been lived in year round as a sole or main residence. In my view, the fact that some unoccupied touring caravans were left on their pitches (instead of being moved to the site's dedicated caravan storage area) out of season would not in and of itself necessarily mean that the appeal site could no longer be characterised as "a site for touring caravans". Be that as it may, the important point here is that the 2022 LDC does not certify the lawfulness of year-round occupation of touring caravans on the appeal site."

21 The Inspector rightly recognised that the 2022 LDC had not certified as lawful permanent occupation of a touring caravan as a main residence. As I have already said under ground 1, at DL[19] the inspector lawfully interpreted the 1991 Permission as permitting use of the site for touring caravans where transient visitors occupy their caravans for leisure purposes. Her use of the terms "transient" and "leisure" stemmed from her interpretation of the term "touring caravan" in the context of this permission. The Inspector considered that use of a touring caravan at the site as a main residence would be a material change of use.

22 In my view, her reasoning was adequate and intelligible, and is addressed further under ground 5.

Ground 4

23 On ground 4 the claimant submits that the Inspector failed to determine whether the proposed use would result in a material change of use. Her finding in DL[22] that there was a "strong possibility" of a material change of use was insufficient. The claimant also submits that the Inspector erred in adopting the current use of the site as her baseline for a comparison with the proposed use, and rejecting a comparison with a notional use. The appropriate baseline was the extant lawful use, whether or not it was being exercised, namely the stationing of caravans all year round. The claimant acknowledges that the scope of any extant use was in dispute.

24 In my view, ground 4 is unarguable and has no realistic prospect of success.

25 At DL[22], the Inspector explained why the claimant had not discharged the burden of proof so as to satisfy the Inspector on the balance of probabilities that the proposed use fell within the existing lawful use of the site. The reason was that there was a "strong possibility" that occupation of the touring caravans as a main residence would result in a material change of use. The finding of a "strong possibility" was a sufficient basis for her conclusion that the claimant had not discharged the burden of proof on the balance of probabilities. She was not required to make a conclusive finding of a material change of use.

26 The Inspector identified the "existing lawful use" at the site at DL[19] as a site for touring caravans where transient visitors occupy their caravans for leisure purposes. She found that the proposed use as a main residence would be a change from the existing lawful use.

27 At DL[20] the Inspector went on to consider whether such a change would, as a matter of fact and degree, amount to a material change of use. The Inspector observed that the *Barton*

Park judgment confirmed that a proposed use can be of the same "type" as an existing lawful use, but still be a material change of use. The Inspector accepted that the proposed use as a main residence would not be a different type of use, but she concluded that there would be a change in the character of the existing use.

28 The Inspector then went on to determine whether the change would be material. At DL[21], the Inspector compared the present use with the proposed use when assessing whether there would be a material change in the character of the existing use. She rejected consideration of any notional use which might theoretically be possible. As the first defendant submits, the Inspector's approach was appropriate and consistent with the guidance given by the Court of Appeal in *Secretary of State for Transport, Local Government and the Regions v Waltham Forest LBC* [2002] EWCA Civ 20, where the Court of Appeal held that, "What is to be compared in deciding whether a proposed change of use is a material change of use is the present use and the proposed use" and "the interposition of a notion of permitted use between the existing use and the use supplied for is a complication not relevant to the exercise under section 192."

Ground 5

29 The claimant submits that the inspector's reasoning in support of her conclusion that there was a strong possibility that the proposed use would result in a material change of use was vague and inadequate. Although she identified changes, she did not set out why those changes would make a material change in the use of the land.

30 In my view, ground 5 is unarguable, and has no realistic prospect of success.

31 In the appeal the claimant did not address the issue of materiality since it maintained that there would be no change to the type of permitted use (DL[20]). Neither party requested a site visit. It was a matter for the judgment of the Inspector as to whether a site visit was necessary. Her decision not to conduct a site visit is not a ground of challenge. In my view the Inspector was not required to visit the site for the purposes of making this determination.

32 I consider that the Inspector's reasons for finding that the change would be material were intelligible and adequately set out in DL[21]. In my view, the reasons met the required legal standard.

33 So, for all the reasons that I have given, permission to apply for statutory review is refused.