



Appeal Decision

Hearing held on 28 June 2022

Site visit made on 24 May 2022

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 8th July 2022

Appeal Ref: APP/Z2505/X/21/3280081

Old Leake Caravan Park, Shaw Lane, Old Leake, Boston PE22 9LQ

- 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 Messrs Michael and Anthony White against the decision of Boston Borough Council.
 - The application Ref B/21/0102, dated 07 March 2021, was refused by notice dated 13 July 2021.
 - 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 described in the application form/ supporting statement as: Certificate of lawful use in respect of the proposed use of land within the existing caravan site for the siting of static caravans to be occupied as 'worker accommodation' without restriction on the time when such occupation has to cease up to a maximum of 25 caravan units on the site at any time within the area defined by the extant permission.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Messrs Michael and Anthony White against Boston Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. In the lead up to the Hearing I sent a note to the parties covering various matters, including a query relating to the nature of the appeal in terms of whether what was being sought would actually fall more suitably within s191 of the Town and Country Planning Act, as opposed to s192. The terms of s192 of the Act are quite specific. S192(2) states:

*If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful **if instituted or begun at the time of the application**, they shall issue a certificate to that effect; and in any other case they shall refuse the application. (My emphasis).*

4. In other words, the question posed in an application under s192 is if a 'proposed' use or operation would have been lawful if it was begun 'at the time of the application' which relates to the date at which the application was made. In this case, the use had already begun at the time of the application and the site was occupied, in part, by agricultural workers, in line with the terms of the previous planning permission granted on appeal in 2019 (the 2019 permission)¹. There is no dispute that the use at the time of the application was lawful.
5. Consequently, I queried whether it would be more appropriate to consider the proposal as if it were made under s191(1)(a) of the Act, as relates to existing uses, based on the following description which was drawn from the information provided in the application:

Certificate of lawful use in respect of the occupation of up to 25 static caravans by agricultural workers within the existing caravan site at The Old Leake Caravan Park (within the area outlined in green on the site plan dated 20 July 2017) without restriction on the time when such occupation has to cease but subject to all other conditions attached to the planning permission granted on appeal under reference number APP/Z2505/W/3211660.

6. The amended description also includes reference to 'agricultural workers' as opposed to 'workers' which more precisely reflects the type of accommodation permitted by the 2019 permission. At the Hearing both parties agreed that s191 was the more appropriate way of considering the proposal, were satisfied with the suggested description and content that no prejudice would arise if I were to consider the appeal on that basis. Thus, I shall consider the application under s191 of the Act based on the description set out above.

Main Issue

7. The planning merits of the use are not relevant to the consideration of an application for a Certificate of Lawful Use (CLU) under section 191 of the Town and Country Planning Act 1990 (the Act). The key question is whether the use is lawful having regard to the relevant facts of the case and any judicial authority.
8. With that in mind, the main issue in this appeal is whether the Council's decision to refuse to grant a CLU was well-founded.

Reasons

9. The land to which the application relates has a long history of use as a caravan site. The current appeal links back to a planning permission, approved in 1986, subject to three conditions. The description of the development on the planning permission is:

Change of use from caravan site and winter storage of unoccupied touring caravans to caravan/ camping site of forty pitches to include touring caravans/ tents/ static holiday caravans at the White Cat Caravan Park.

10. Since that time, two further planning permissions have been granted under section 73 of the Town and Country Planning Act 1990 (the Act) to carry out development without complying with conditions attached to the original

¹ APP/Z2505//18/3211660

permission, one granted in 2015 (the 2015 permission) and one granted on appeal in 2019 (the 2019 permission). The effect of the 2019 permission, is the nub of the dispute between the parties.

11. In 2006 an application to extend the caravan site on an adjacent parcel of land was approved, subject to a different set of conditions. That area of land has a slightly different planning history and the CLU application does not relate to it. Consequently, I shall not expand on the details relating to that part of the site.
12. It is common for planning practitioners to refer to applications made under s73 of the Act as being for the removal or variation of a condition attached to a planning permission. However, the removal of a condition does not amount to 'development' as defined by s55(1) of the Act. Thus, planning permission is not required to remove a condition per se. Planning permission is required to carry out 'development' without complying with conditions subject to which a previous permission was granted and that is the purpose of s73 of the Act.
13. The effect of an approval is to grant a new planning permission which stands alone from the previous permission which remains unaltered. An applicant will then have the choice as to which permission to implement. When granting permission under s73 a planning authority, or Inspector, has the option of removing conditions attached to the original permission, varying the terms of conditions, adding new conditions and reinstating conditions imposed on the original permission. A permission granted under s73 does not alter the nature of the development for which planning permission was originally granted, merely the conditions subject to which that development must comply.
14. Thus, although the 2015 permission was described on the decision notice as being an application to 'remove condition 3 of the 1986 permission', it was, in effect, a new planning permission to carry out the development originally approved, subject to the three new conditions imposed which related to a flood evacuation plan and measures to ensure that the site was occupied as holiday accommodation. The main change brought about by that permission was to remove the restriction in seasonal restriction imposed by condition 3 of the 1986 permission, which limited occupancy of caravans to the months of March to October. Instead of the seasonal condition, conditions were added to state that the use shall be for holiday purposes only, to limit the length of time people could occupy units (no more than two months in any three month period) and to require a register of occupiers to be kept and made available to the LPA on request.
15. The evidence indicates that the site was then operated in line with the 2015 permission but holiday related business remained poor. Subsequently, an application was submitted in 2017 which sought permission to use 25 caravans for accommodation for agricultural workers. That application was refused by the Council and a subsequent appeal was withdrawn. However, a further application was submitted in 2018 and the decision notice described the proposal as such:

Resubmission of B/17/0130 to remove condition 2 on planning approval B/15/0017 to enable a maximum of 25 caravans to be occupied by agricultural workers for a period of up to three years with the maximum continuous length of any agricultural worker being limited to 10 months at Old Leake Caravan and Leisure Park, Shaw Lane, Old Leake, Boston PE22 9LQ

16. The Council refused that application and the banner heading in the subsequent appeal decision letter described the proposal as follows:

The application sought planning permission to remove condition 3 of B/16/0606/86 at the White Cat Camping and Caravan Park, Shaws Lane, Old Leake, Boston, Lincolnshire PE22 9LQ without complying with a condition attached to planning permission Ref B/15/0017, dated 20 April 2015.

17. That description causes some confusion because it conflates the 1986 permission and the 2015 permission. Condition 3 of the 1986 permission had already been removed by the 2015 permission. Moreover, it doesn't specify an act of development for which permission was sought – the removal of a condition is not development of itself.
18. However, when read in the context of the relevant history it seems clear that what the Inspector did was take the 'description of development' given on the previous permission and insert that into the banner heading of the appeal, such that 'remove condition 3 of B/16/0606/86' was used as the description of development, as opposed to describing the actual development for which permission was sought, as set out in the original 1986 permission. In other words, the technically incorrect description of development given in the 2015 permission was carried through into the description given by the Inspector in the 2019 appeal.
19. That followed through into the wording of the formal decision at paragraph 1 which states the following:
- The appeal is allowed and planning permission is granted to remove condition 3 of B16/0606/86 at The White Cat Camping and Caravan Park, Shaws Lane, Old Leake, Boston, Lincolnshire PE22 9LQ without complying with a condition attached to planning permission Ref B/15/0017, dated 20 April 2015 at Old Leake Caravan Park, Shaw Lane, Old Leake, Boston PE22 9LQ in accordance with the application Ref B/18/0136 dated 03 April 2018, without compliance with condition number 2 previously imposed on planning permission Ref B/15/0017 dated 20 April 2015 and subject to the attached Schedule of Conditions.*
20. Having regard to the terms of s73, a more accurate way to describe the development would have been the *change of use from caravan site and winter storage of unoccupied touring caravans to caravan/ camping site of forty pitches to include touring caravans/ tents/ static holiday caravans without compliance with condition 2 of planning permission reference B/15/0017.*
21. That appears to me to be the logical understanding of what was considered and approved by the appeal decision. At the Hearing, both parties confirmed that to be their understanding. In other words, the 2019 permission did not alter the description of the development permitted on the site, which remains as described in the 1986 permission. Rather, it varied the conditions subject to which that development must conform.
22. Having clarified the ambiguity relating to the description, the question is then whether the permission imposed a temporary three-year limit for use by agricultural workers. The appellant contends that there is no implied power to impose conditions on a grant of planning permission, save for that granted by a

Development Order, in line with the principles established in the *I'm Your Man*² judgment and the subsequent line of similar judgments which include *Cotswold Grange Country Park LLP*³. In short, those judgments held that the description of development alone was not sufficient to imply a limitation in the absence of a condition attached to the permission. In *I'm Your Man*, the issue was temporal, in terms of the duration of a permission and in *Cotswold Grange*, the issue was numerical in terms of the numbers of caravans.

23. That is not to say that the description of development within a decision notice or letter is redundant. It still defines what is approved and it is necessary to consider whether what is proposed by way of variation falls within that description or is materially different to it, as was the case of *Barton Park Estates*⁴ which was the subject of a recent Court of Appeal judgment. Planning permission had been granted for a caravan park with a specific mix in the type and tenure of caravans set out in the description of development but not controlled by condition.
24. In the absence of a condition, having regard to *I'm Your Man*, the appellant contended that the use of the site for a different mix, incorporating substantially more static caravans was lawful. However, the Inspector found that what was proposed would bring about a material change in the character of the use of the appeal site, when compared to the description of the approved development. That decision was found to be legally sound. Thus, the absence of a limiting condition on the approval was of no consequence because the proposal fell outside the scope of the original planning permission and an entirely new permission would be required for what was proposed.
25. In the present case, it has not been suggested that seasonal use by agricultural workers, for up to ten months in a calendar year, would bring about a material change in the use of the site when compared to the lawful permitted use. Had that been the case, the use by agricultural workers would not have fallen within the scope of the original description and should not have been considered under the s73 route at the time of the previous application and appeal. On the information before me I see no reason to depart from the agreed position of the parties in that respect.
26. In the absence of a material change of use, if no condition was in place limiting the occupation by agricultural workers to a temporary period, the continued use would be lawful having regard to the *I'm Your Man* line of cases. However, the Council maintains that the description of development on the application form in addition to condition 7 of the 2019 permission are sufficient to control the temporary nature of occupancy by agricultural workers. In its view, it is not a case of the absence of a condition but one where an interpretation of the condition is required.
27. The appellants consider that the absence of a defined time limiting period set out within the conditions was a deliberate and conscious decision on the part of the Inspector. In their view, having found that no harm would arise from the proposal in terms of the character and appearance of the area or living conditions, there was no reason for the Inspector to impose a temporary three

² *I'm Your Man Limited v Secretary of State for the Environment* [1999] 77 P. & C.R. 251

³ *Cotswold Grange Country Park LLP vs SSCLG & Tewksbury Borough Council* [2014] EWHC 1138 (Admin)

⁴ *Barton Park Estates Ltd v Secretary of State for Housing, Communities & Local Government* [2022] EWCA Civ 833

- year period. In their view, condition 7 is simply there to identify what should happen at some future undefined point if and when the site ceases to be occupied by agricultural workers. Thus, in their view, condition 7 isn't a time limiting condition at all and the principles of *I'm Your Man* should apply.
28. In support of its case, the Council referred to a number of judgments relating to the interpretation of planning conditions⁵. Whilst those judgments do not set a precedent for implying an entirely new condition into a permission they do set the scope for implication in terms of the interpretation of an existing condition.
29. The wording of condition 7 is as follows:
- (7) At the expiry of [sic] period of temporary consent hereby granted the permitted occupancy for the entire site shall be restricted as follows:*
- No person shall occupy the caravans or tents for more than two months in any three month period and the caravans or tents shall be used for holiday accommodation only and for no other purpose. No caravan or tent shall form the main residence of any individual.*
30. I do accept that the condition, on its face, identifies that permission is being granted for a temporary period. It then goes on to identify what should occur at the expiry of that period. However, the condition itself, nor any other condition, specifies the timescale of the temporary period which undoubtedly causes ambiguity to an extent that the condition has no sensible meaning, if read in isolation⁶. The Council does acknowledge that the decision would have been clearer if a timeframe had been set out within the condition.
31. However, in its view, that does not render the condition invalid because a reasonable reader would have no difficulty understanding what is meant by the condition when it is viewed in the context of associated documentation. The Council suggests that the decision itself is sufficiently clear in that it states that 'planning permission is granted....***in accordance with the application Ref B/18/0136, dated 03 April 2018***, without compliance with condition number 2 previously imposed on planning permission ref B/15/0017, dated 20 April 2015 and subject to the attached Schedule of Conditions'.
32. In other words, the Council maintain that there is a clear path to the terms of the application which requested permission for a temporary period of three years, as set out in the application form⁷ and associated documents. Reference is also made to paragraph 9 of the appeal decision wherein the Inspector identifies that permission was sought for a temporary period of up to three years.
33. I agree with the Council that there is a distinction between the case and the circumstances relating to *I'm Your Man*. In that case, no relevant time limiting condition was imposed at all. Here, condition 7 clearly purports to impose some

⁵ Trump International Golf Club Scotland Limited and another v The Scottish Ministers (Scotland) [2015] UKSC 74; Dunnet Investments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 192; UBB Waste Essex Ltd v Essex CC [2019] EWHC 1924 (Admin); London Borough of Lambeth (appellant) v Secretary of State for Housing, Communities and Local Government and others (respondents) [2019] UKSC 33; Fawcett Properties Ltd v Buckingham CC [1960] 3 W.L.R. 831

⁷ As per the description set out in paragraph 16 of this decision

- kind of restriction, albeit that the exact timeframe is not set out, either by condition or within the description of 'development' approved.
34. Having regard to the 2019 appeal the Inspector set out that the proposal was for a temporary period of three years within paragraph 9 of the decision and the opening line of paragraph 24 states that '*conditions relating to the period and use of the caravans for the accommodation of agricultural workers and setting out the use after the period of temporary consent is [sic] necessary in the interests of certainty*'. If the Inspector was of the view that no temporary period was necessary, the condition would not have been needed at all. Thus, it seems likely that the Inspector was of the view that a temporary permission was being granted. It is not clear if the omission of a defined period within the condition was a drafting error or oversight or whether the Inspector did not feel it was necessary to actually define the period. In the absence of any detailed commentary within the decision letter it is hard to tell.
35. In that context, having regard to the relevant caselaw, it is necessary to consider whether the uncertainty can be resolved by implication, having regard to relevant background documentation. There is agreement that the application sought permission for a three-year period, as set out in the application form. Any reasonable reader looking at the application and decision as a whole would be able to understand that.
36. However, I have real concerns as to whether that general reference provides the necessary precision to enable the exact meaning to be understood. Section 72(1)(b) of the Act states that conditions may be imposed on the grant of planning permission 'for requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised, *at the end of a specified period*, and the carrying out of any works required for the reinstatement of land at the end of that period' (my emphasis added). Reference to a 'specified period' is perhaps an indication that the exact timescale should be set out within the condition itself.
37. In addition, paragraph 56 of the National Planning Policy Framework identifies that conditions should only be imposed where they meet six tests, which include being precise and enforceable. The Council maintain that a common sense approach is that the three year period would run from the date of the Inspector's decision. However, in my experience, temporary or time limiting conditions can be set out in a number of forms. It is not uncommon for the period to run from the date of a decision but it can equally be from the date of first occupation, from the date of the application, from a specific calendar date, or even the occupation of individual units of occupation.
38. The application form does not set an end date for occupation by agricultural workers. Nor does it specify when the three-year period should commence. From reading the committee report in relation to the 2019 permission it would seem that the use had already commenced and that the application was submitted retrospectively. Without something to clarify precisely when the 'three year' period would commence and end I am not satisfied that one can make an assumption that the period would run from the date of the decision. It could equally be three years from the commencement of the use or three years from the date of the application. The respective appeal statements, the application form, the Council's committee report or the Inspector's decision letter shed little light on the precise timescale in terms of beginning and end

- dates and I have not been directed to any other document that provides greater detail. At paragraph 9 of the committee report the application was said to be personal to the applicants who have the license to run the site and to be for a period 'up to' three years.
39. The Council put forward the following suggested condition to the Inspector at the time of the 2019 appeal: (4) *The use hereby permitted shall be carried on only by Mr Michael White and Mr Anthony White and shall be for a limited period being the period of three years from the date of this permission or the period during which the premises are owned by Mr Michael White and Mr Anthony White whichever is the shorter, after which time the land shall revert to the previous authorised use.*
40. The nature of the suggested 'personal' condition, with implications for the timescale, highlights one of the different approaches that can be taken to time limiting conditions. At paragraph 23 of the decision letter the Inspector states, '*I have not attached the condition restricting use to the appellants as it would not be reasonable or necessary and the Council has not provided sufficient justification for the imposition of the condition*'. No specific comment is made within the decision letter regarding the element of the condition relating to the timeframe. Thus, when the Inspector states that the Council has not provided sufficient justification for the imposition of 'the' condition it is unclear if that relates to the condition as a whole, including the three-year reference, or just the personal aspect of it.
41. Having declined to attach the suggested condition, no other condition was imposed which clearly sets out a timeframe. In the absence of a defined timeframe within a condition, or any discussion on the precise details within the application documents or appeal decision it is difficult to infer a sensible meaning into condition 7. Two reasonably informed readers could easily draw different conclusions as to what 'three years' actually means in terms of the beginning and end dates.
42. Therefore, even with the benevolence of interpretation, sufficient precision cannot be implied to make condition 7 readily understood. The Courts have held that a relatively cautious approach should be taken when interpreting meaning, in view of the fact that breaches of planning conditions may be used to support criminal proceedings⁸. The fact that any limitation in this case has a direct implication for the home life of the residents involved, with potentially significant consequences, highlights the need for precision and caution when attempting to interpret the significant ambiguity in condition 7.
43. The ability to interpret meaning into a condition will be fact sensitive depending on the specific nature of the condition and associated case. The fact that the Courts have been able to ascertain a clear meaning in relation to other cases does not dictate that will be possible in every case. Having read the respective judgments there are clear differences between this case and the circumstances relating to *Trump and Lambeth*. In *Lambeth*, the precise wording of the 'varied' condition in question was set out within the description of development on the decision notice issued by the Council, as opposed to being set within the schedule of attached conditions. There was no dispute over the meaning of the suggested wording, nor was there any need to look beyond the terms of the decision itself. In simple terms, the question was whether the varied condition

⁸ Patterson J in the case of *Dunnett Investments Ltd* (para 37(v)) & Lord Carnwath in the case of *Trump* (para 66).

should have been included within the list of conditions as opposed to being set out within the description of what was being permitted. That is a very different scenario to the present appeal.

44. *Trump* did require examination of extraneous material in order to ascertain whether a condition requiring a design statement could be given an enforceable and ascertainable meaning. The Courts held that it could, having regard to other conditions within the document and other background material. In the present case, no other conditions shed any light on the timeframe of any temporary consent and, for the reasons given, the background material presented does not precisely define the beginning and end date of the three-year period.
45. Thus, condition 7 is unclear on its face and the uncertainty cannot be satisfactorily resolved by implication. Consequently, in my view, condition 7 of the 2019 permission cannot be given an ascertainable meaning and it is not enforceable as a result. Accordingly, the permission does not limit the occupation of up to 25 static caravans by agricultural workers to a temporary period.
46. Section 191(2) of the Act identifies that uses will be lawful if no enforcement action may then be taken in respect of them either because they did not involve development or permission, because the time period for enforcement has expired, or for any other reason and they do not constitute a contravention of any enforcement notice then in force. In the absence of an enforceable condition the use is not materially different to the established lawful use as a caravan site. As such, the existing occupation of up to 25 static caravans without restriction on when such occupation has to cease is lawful, subject to compliance with other conditions attached to the 2019 permission.
47. For those reasons I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use was not well-founded and that the appeal should succeed. I will therefore allow the appeal and exercise the powers transferred to me under section 195(2) of the 1990 Act as amended to grant a certificate of lawful use, in line with the terms set out at paragraph 6.

Chris Preston

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 07 March 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in green on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The planning permission granted on appeal under reference APP/Z2505/W/3211660 did not impose a precise and enforceable condition to restrict the occupancy of up to 25 static caravans, within the area outlined in green on the site plan dated 20 July 2017, to a temporary period. In the absence of a precise and enforceable condition to that effect, the continued occupancy of up to 25 static caravans within the defined area by agricultural workers is lawful within meaning of section 191(2) of the Town and Country Planning Act, providing that the use of the land complies with all other conditions attached to the planning permission granted on appeal under reference APP/Z2505/W/3211660.

Chris Preston

Inspector

Date: 8th July 2022

Reference: APP/X/Z2505/21/3280081

First Schedule

Certificate of lawful use in respect of the occupation of up to 25 static caravans by agricultural workers within the existing caravan site at The Old Leake Caravan Park (within the area outlined in green on the site plan dated 20 July 2017) without restriction on the time when such occupation has to cease but subject to all other conditions attached to the planning permission granted on appeal under reference number APP/Z2505/W/3211660.

Second Schedule

Land at Old Leake Caravan Park, Shaw Lane, Old Leake, Boston PE22 9LQ, as shown outlined in green on the plan attached to this certificate)

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8th July 2022

by **Chris Preston BA(Hons) BPI MRTPI**

**Land at: Land at Old Leake Caravan Park, Shaw Lane, Old Leake, Boston
PE22 9LQ**

Reference: APP/X/21/3280081

Scale: Not to scale



APPEARANCES

FOR THE APPELLANT:

Mr Mark Southerton MRTPI

Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Howells
Ms Lauren Birkwood

Of Counsel
Principal Town Planner

Documents Submitted at the Hearing

- 1) Legal submission speaking note on behalf of the Council