The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/11/18

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 20.02.2019

Appeal Decision

Site visit made on 29/11/18

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 20.02.2019

Appeal Ref: APP/B6855/X/18/3213425

Site address: Cannisland Park, Parkmill, Swansea, SA3 2ED

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Mr Cunningham against the decision of City and County of Swansea Council.
- The application Ref: 2018/1552/PLD, dated 12 July 2018, was refused by notice dated 7 September 2018.
- 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 is sought is the use of land for the siting of 15 additional caravans.

Decision

1. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the proposed use which is considered to be lawful.

Main Issue

2. This is whether the Council's decision to refuse to grant a Lawful Development Certificate was well-founded.

Background and Preliminary Matters

3. The appeal relates to a well-established caravan park located off the A4118 near the settlement of Kittle in the Gower Area of Outstanding Natural Beauty (AONB). The caravan park already contains 45No. mobile homes (hereinafter referred as the existing caravans) with the northernmost part of the appeal site (referred in the evidence as the northern land) used for purposes ancillary to the wider caravan park. The current proposal seeks a Lawful Development Certificate (LDC) for the use of this northern land for the siting of 15No. caravans.

4. I have not been provided with a copy of the original planning permission for the caravan park, although it is understood that permission was granted in 1965 for the siting of residential caravans on the land. I have not seen any plan associated with this grant of planning permission or any planning conditions imposed therein. However, it appears to be common ground that the permission only related to the area of land currently occupied by the existing caravans and not the northern land.

5. Notwithstanding the fact that the northern land was outside of the scope of the 1965 planning permission, the Local Planning Authority (LPA) issued an LDC in July 2017 in respect of the land located to the north and north-west of the existing caravans (hereinafter referred as the July 2017 LDC). For the avoidance of any doubt, that LDC related to the northern land referred above, but also a substantial area of land to the north-west of the existing caravans. In granting the July 2017 LDC, the LPA confirmed that: "S*ufficient evidence has been provided to confirm that, on the balance of probability, the buildings, sewerage treatment plan, soakaway, access road, storage areas and amenity areas (located within the land subject of the application) have been used for purposes which serve, and are ancillary to, the adjacent caravan park for a period of time in excess of 10 years*".

6. A subsequent application for an LDC was submitted in December 2017 to certify that the northern land that forms part of the current appeal site could lawfully be used for the siting of 15No. static caravans (hereinafter referred as the December 2017 LDC application) [1]. That application was refused by the LPA in July 2018 on the basis that insufficient evidence had been provided to demonstrate that the land could be lawfully used for the siting of 15No. static caravans without the need to apply for planning permission. The current appeal proposal is effectively a resubmission of the December 2017 LDC application, although the current proposal is supplemented by additional evidence that includes a legal opinion which concludes that, in the absence of any evidence to indicate that there was a condition or other restriction on the 1965 permission which prevents the site from being used for 60No. caravans, the proposed development would be lawful.

Reasons

7. The Council contends that, in the absence of any documentation to confirm the boundary and unrestricted nature of the 1965 planning permission, the proposed increase in the number of caravans could not be implemented without the need for planning permission. In coming to such a conclusion, it refers to the fact that the burden of proof lies with the appellant in such cases. However, whilst I acknowledge such a well-established principle, the courts have also held that an applicant's own evidence does not need to be corroborated by independent evidence and that, if the LPA has no evidence of its own to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse an application for an LDC. It is within this context that I shall consider this appeal.

8. The evidence appears to indicate that the caravan park has been operated on the basis of an unrestricted planning permission for a significant period of time and I have not seen anything to suggest that the 1965 permission incorporated any planning conditions. It is on the basis of such information that I concur with the appellant's contention that the probability is that there is no restriction on the number of caravans located on the land occupied by the existing caravans. It cannot be ignored however, that the parties are in agreement that the 1965 permission did not relate to the northern land referred above.

9. The July 2017 LDC is however a significant material consideration, not least because it confirmed that the northern land subject of this appeal is lawfully in use for purposes ancillary to the adjacent caravan park. The Caravan Sites and Control of Development Act 1960, defines a caravan site as land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with the land on

[1] LPA Ref – 2017/2659/PLD

which a caravan is stationed, specifically noting that a caravan site must form both the land on which the caravans are stationed and any ancillary land, with no differentiation between the two.

10. Within this context, I was able to confirm at the time of my site inspection that the northern land sits within a wider field that encloses the existing caravan park, with its northernmost boundary comprising a mature and well-established border. It was also notable that the northern land is already an integral part of the caravan site with an existing internal access road dissecting the site and refuse disposal and amenity areas in use. It is notable that the proposed development would represent a 33% increase in the numbers of caravans relative to the existing situation. However, as set out above, the probability is that the 1965 permission did not incorporate a restriction in terms of the number of caravans and, even if it did, it would not apply to the wider area comprising the northern land.

11. It is common ground between the parties that the proposed development would not constitute a change of use of the land, with the Council stating in its evidence that the northern land forms part of the same planning unit as the land originally granted planning permission in 1965. In light of my findings on site, I have no reason to come to a different conclusion on such a matter. Indeed, the development would not result in materially different planning circumstances to that currently, or potentially, found at Cannisland Park and, as a matter of fact and degree, the development would not result in such a change to the definable character of the use or area that it would result in a material change of use. In coming to this conclusion I have had full regard to the impact of the development on other uses and premises, including those relating to amenity and traffic. I am also satisfied that such a finding is consistent with the principles established in the judgements referred within the evidence, including the Reed[2], Metal and Waste Recycling[3] and Childs[4] cases.

12. For these reasons, and having considered all matters raised, I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use of land for the siting of 15 additional caravans was not well-founded and that the appeal should, therefore, succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended accordingly.

Richard E. Jenkins

INSPECTOR

[2] Reed v the First Secretary of State for Communities and Local Government & Another [2014] EWCA Civ 241
[3] Hertfordshire County Council v The Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd [2012] EWCA Civ 1473
[4] R (oao of John Childs) v First Secretary of State and Test Valley BC 2005 EWHC 2368 Admin

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (WALES)
ORDER 2012: ARTICLE 28

IT IS HEREBY CERTIFIED that on 12 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would fall within the definition of a caravan site and, by virtue of the combination of the scale of the proposed development and the site specific circumstances, the use of the land described within the First Schedule would not amount to a material change of use.

Signed:

Richard E. Jenkins
INSPECTOR

Date
Reference: APP/B6855/X/18/3213425

First Schedule:

Use of land for the siting of 15 additional caravans

Second Schedule:

Land at Cannisland Park, Parkmill, Swansea, SA3 2ED

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 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 be 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or 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 relevant to the decision about lawfulness.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Plan

This is the plan referred to in my decision dated:

by Richard E. Jenkins BA (Hons) MSc MRTPI

Land at: Cannisland Park, Parkmill, Swansea, SA3 2ED

Reference: APP/B6855/X/18/3213425

Scale: