

Appeal Decision

Hearing held on 29 August 2007

Site visit made on 29 August 2007

by Neil Roberts BA 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

Date: 4 September 2007

Appeal Ref: APP/W3520/X/07/2039698

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk

- 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 M Jay against the decision of Mid-Suffolk District Council.
- The application Ref 1869/06/LDCP, dated 7 August 2006, was refused by notice dated 8 December 2006.
- 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 increase in the number of caravans on a lawful caravan site from 6 to 12.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. In this case the burden of proof rests with the appellant to demonstrate that, as a matter of fact and degree, an increase in the number of caravans on the site from 6 to 12 would not constitute a material change of use, and would thus be lawful.

Reasons

2. The judgement in *I'm Your Man Ltd v Secretary of State for the Environment and N Somerset DC* [September 1998, CO/728/98, R Purchas, Deputy Judge] is directly relevant to this appeal. That judgement is concerned with whether the description of development in an appeal decision as being for a temporary period of 7 years itself acted as a limitation on the scope of the permission granted. It was held that, in the absence of a condition on the planning permission requiring cessation of the use after 7 years, the permission granted was a permanent one. In my view the judgement in *I'm Your Man* has general application against reliance on the description of development on a planning permission as some form of limitation of the development permitted. In the case before me the development permitted by planning application 559/84 is thus not restricted to the siting of 6 caravans, the permission containing no condition restricting the number of caravans.
3. The judgement in *Childs v First Secretary of State and Test Valley BC* [Q.B.D., 18 October 2005, J Goudie, Deputy Judge] establishes the principle that an increase in the number of caravans on a site cannot be said to be incapable of

constituting a change of use. By reference back to the judgement in *Brooks and Burton Ltd v Secretary of State for the Environment and Dorset CC*, it was held that in assessing whether there has been a material change of use account has to be taken of the character of the use of the land, including factors such as the planning consequences and environmental impact of any particular use. Whether such a change is a material change of use is then a matter of fact and degree to be determined in each case.

4. In this case it was agreed at the Hearing that the site is well screened at all times of the year by a dense high hedge. Any increase in the number of caravans would not be apparent from outside the site. There would thus be no visual impact on the character and appearance of the area. The caravans would be occupied for residential purposes in a manner similar to occupation of the existing caravans. In that sense there would be no change in the nature and character of the use. If occupants of the additional caravans pursued ancillary business activities on the site, that too would mirror what already takes place, which is typical of a gypsy site. I would add that the physical limitations of the site, particularly after 6 extra caravans were introduced, would constrain the extent to which there could be an intensification in business activities. I doubt if a change in the character of the overall use of the site would arise.
5. It may be that there would be some increase in vehicular movements, though that is not certain as families already on the site could, for example, introduce a touring caravan which would simply provide additional living space for the family when it was not used for touring. In any event the local road network, though including relatively narrow lanes, serves the population and businesses, including many farms, of a relatively wide area. From my observations the network is far from bereft of traffic. In that situation, even taking the worst case of 6 additional families living on the site, I feel any extra vehicular movements generated would be barely perceptible and would not constitute a change in the character of the use.
6. In my judgement the planning consequences and environmental impact of an increase from 6 to 12 caravans on this lawful residential caravan site would not be such as to change the character of the use of the land. On that basis I consider that such an increase in the number of caravans would not, as a matter of fact and degree, amount to a material change of use.
7. I have considered other appeal decisions drawn to my attention. However, I have determined the appeal on its own merits on a fact and degree basis.
8. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an increase in the number of caravans on the lawful caravan site from 6 to 12 was not well-founded, and that the appeal should succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

9. 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.

Neil Roberts

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA MRTPI Principal, Philip Brown Associates Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Matthews MA Planning Officer
Mr R Vincent DipTP MRTPI Planning Officer

DOCUMENTS

- 1 List of persons present at the hearing



Lawful Development Certificate

The Planning Inspectorate
Temple Quay House
2 The Square
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Bristol BS1 6PN
☎ 0117 372 6372
email: enquiries@pins.gsi.
gov.uk

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 7 August 2006 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The increase in the number of caravans from 6 to 12 on the lawful caravan site would not, as a matter of fact and degree, constitute a material change of use of the land.

Signed

Neil Roberts

Inspector

Date 4th September, 2007.

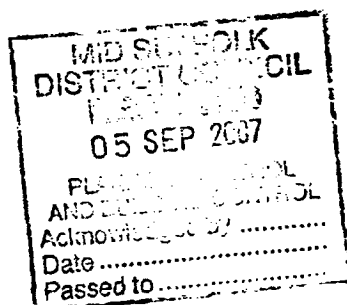
Reference: APP/W3520/X/07/2039698

First Schedule

Increase in the number of caravans on a lawful caravan site from 6 to 12.

Second Schedule

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk.



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 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 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.
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

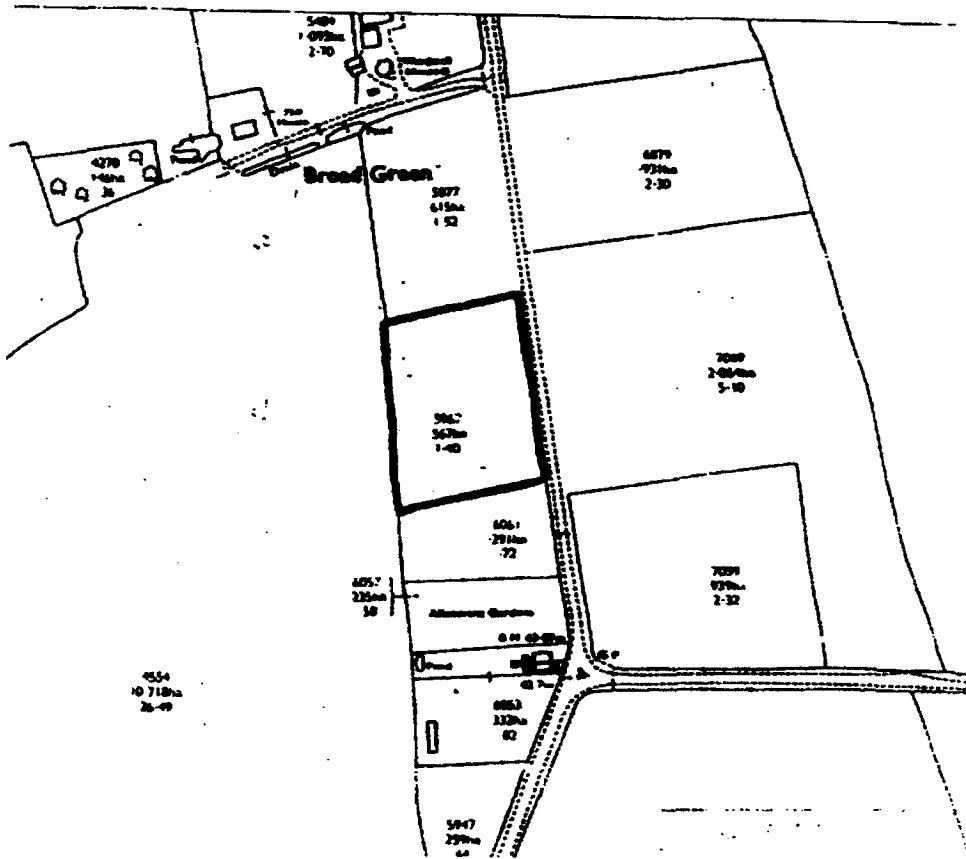
This is the plan referred to in my decision dated:

**Land at: Greenacres, Mill Road,
Wetheringsett-cum- Brockford,
Suffolk**

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4th September, 2007.