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## Appeal Decision

Hearing held on 14 July 2022

Site visit made on 14 July 2022

**by Timothy C King BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

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**Appeal Ref: APP/D3505/X/21/3272144**

**Shotley Caravan Park, Gate Farm Road, Ipswich IP9 1QH**

- 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 Cooper-Barney against the decision of Babergh District Council.
  - The application Ref DC/20/00874, dated 25 February 2020, was refused by notice dated 19 February 2021.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described as *'Stationing of 26 static caravans for permanent residential occupation.'*
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### Decision

1. The appeal is dismissed.

### Preliminary matter

2. During the Hearing reference was made by a Council witness to an enforcement notice issued in 1995 against an alleged change of use of the appeal site (known as 'Land to the rear of Gate Farm Road') at that time. The notice required that the use of the land as a seasonal caravan site should cease, and all caravans be removed from the site. However, following an appeal the notice was corrected and the requirement was changed to allow for a maximum of 13 caravans to remain on the land.
3. The witness indicated a belief that, despite subsequent changes to the planning position by way of various applications made, the said enforcement notice could still be in force with its requirements thereby remaining enforceable.
4. The appellant disagreed with the above assertion and, given the site's planning history which I outline below, and as I have subsequently received no formal submissions on this point either in support of the claim or otherwise, I must take the view that the requirements of the said enforcement notice have been overtaken by events.

### Background

5. In March 2017, some 21 years after the appeal against the enforcement notice, a lawful development certificate (LDC) under s191 was granted for the use of

the land involving the stationing of a maximum 3 caravans for residential purposes and also a maximum of 10 caravans for seasonal/tourism purposes.

6. Subsequently, in October 2019, a LDC under s192 was issued for the stationing of 13 twin-unit caravans on the land for permanent residential occupation, confirming that on 21 June 2018 (the date the application was made) the said development would not have resulted in a material change of use of the land.

### **Main Issue**

7. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

### **Reasons**

8. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.
9. It is not disputed that intensification of a use is capable of constituting a material change of use. What is necessary, however, is that the test for deciding this is whether there has been a change in the character of the use of the land. The main parties disagree on whether, as a consequence, a material change would occur in this instance.
10. It is equally well recognised that intensification was capable of being of such a nature and degree as itself to affect the definable character of the land and its use and thus give rise to a material change of use. Mere intensification, if it falls short of changing the character of the use, would not constitute such a change. It is easy to state the principle of intensification may be of such a degree or on such a scale as to make a material change in the character of a use; it is far more difficult to apply it in practice.
11. The appellant relies heavily on two Court of Appeal judgements to support his case. Firstly, *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited* [2012] EWCA Civ 1473 involved an intensification in the use of a scrap yard and whether this constituted a material change in the use of the land. The Inspector had allowed appeals against enforcement notices issued against the use, finding that there had not been a breach of planning control.
12. The judge indicated that the Inspector had correctly considered what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use.
13. The underlying principle in the above case is that mere intensification is not sufficient if it falls short of materially changing the definable character of the use of the land.
14. This principle came to the fore in the other main judgement cited; that of *Reed v SSCLG & Another* [2014] EWCA Civ 24. Here, the issue of a material change of use of land in the context of an increased number of caravans was considered. The Inspector, whose decision to dismiss an appeal against an

enforcement notice was challenged, had previously found that a doubling in the number of caravans on the land amounted to a material change of use, but failed to identify any material change in the definable character of the land. In the subsequent court judgement, the judge commented:

*"If the Inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a 'doubling of the number of caravans'. A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site....Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach that mere intensification could amount to a material change of use."*

15. The consideration to be borne in mind is whether both the on-site and off-site effects are such that there has been a definable change in the character of the use of the land. Mere intensification, even with adverse side effects, is not enough.
16. In turn, the Council also relies on two particular court judgements. The relatively recent case of *Barton Park Estates Ltd v SSCLG and Dartmouth National Park Authority* [2022] EWCA Civ 833 involved a site which enjoyed a longstanding planning permission for the siting of a mixture of residential units, including chalets along with static and tourer caravans on a leisure park, subject to certain seasonal occupation restrictions. The culminating court of appeal judgement followed an appeal decision where the Inspector upheld the Council's decision to refuse a LDC under s192 for the proposed siting of up to 80 caravans for residential purposes.
17. The Inspector, in dismissing the appeal, had concluded that the earlier planning permission did not provide for such, and it would amount to a material change of use of the land. Although acknowledging that the proposed use would not be of a different type to the existing lawful use, in that the planning unit would remain a caravan site, she reasoned that the intensification of an existing use can amount to a material change of use, and that the issue was whether the extent and nature of the change would amount to a change in the character of the existing use.
18. This case showed the importance of being clear as to that what is compared, in deciding whether there would be a material change of use, is the present use (rather than any notional use which may theoretically be possible without the need for a further grant of planning permission) and the proposed use.
19. Although the appellant doubts the relevance of *Barton* to the current appeal, in that it involved a material change from a mixed use to a single use, I consider that the principle holds good to support the Council's stance. In particular, the judge commented:

*"The appellant says that it would not be a material change, because the site would continue to be a caravan site, or at any rate a caravan site with some chalets in addition, and because intensification of an existing use does not amount to a material change. However, whether there is a material change of use is a fact-sensitive issue which is for the Inspector to determine."*

20. Admittedly, the change in that instance would have been different to the current case in that it involved that of a caravan site which is principally for holiday use with some limited provision for residential caravans to a caravan site which is primarily or entirely residential, but the judge remarked that the Inspector was entitled to conclude that the proposed use would amount to a material change of use and that a certificate of lawful use should be refused.
21. He concluded, making the point that because this is a matter of planning judgement, and so long as the Inspector's conclusion is not Wednesbury unreasonable, the court would not interfere with it.
22. Accordingly, I need to consider the consequences of the changes, both within, and on the immediate surroundings outside, the planning unit. This includes examining such matters as the appearance of the site in the landscape and its impact on the visual amenity of the area; the activity taking place on the land; the traffic generated by the use both in terms of numbers of vehicles and patterns of movement and also the effect on the immediately surrounding roads. In other words, the on-site and off-site effects of the proposed intensified use of the land.
23. On this point the appellant cites an appeal decision (*APP/B6855/X/18/3213425*) from 2018 which, like the current appeal, involved an appeal against a Council's refusal to issue a LDC under s192 for the siting of 15 additional caravans. Here, the Inspector, disagreed with the Council and allowed the appeal. That said, I have no first-hand knowledge of the individual circumstances involved. For this reason, direct parallels are not easily drawn, but I do note that the site already accommodated 45 mobile homes. This, in itself, is an indicator of contextual scale which could easily suggest that lesser resultant impacts would arise in that particular instance.
24. On relative scales of increase I have also had regard to the judgement of *John Childs v SOS and Test Valley Borough Council* [2005] EWHC 2368 (Admin) where the judge commented:
- "A change in use can be clearly identified, albeit by reference to scale. The question then is whether it is a material change of use. From four to five has, as a matter of fact and degree been found not to be material. From four to eight has, as a matter of fact and degree, been found to be material, given the change in the character of the use that the difference in scale would produce."*
25. Regarding the current appeal, in terms of additional traffic generated, it has to be the case that a doubling of the number of caravans/mobile would give rise to a significant increase in the number of vehicular movements in both directions along Gate Farm Road and, given that there is no seasonal restriction on the residential occupation, it would not be unreasonable to say that this would be perceptible to the local residents who live in the immediate residential area beyond the site's entrance.
26. I accept the appellant's point that the site cannot be viewed from the B1456, but this is due to the winding nature of Gate Farm Road and the fact that the land levels start to drop after the point of site entrance. At the time of my site visit the mobile homes/caravans were set down in the valley on the lower part of the site. Nonetheless, I must take issue with the appellant's comment in paragraph 3.35 of his Written Statement, that, given the size of the site, and

its ability to accommodate 26 caravans at an extremely low overall density, any perceived change to landscape character or visual impact would be small.

27. This is a somewhat sweeping statement which, in concentrating only on land area, does not take into account the site's physical constraints, and also my observations that different parts of the site contribute to its particular character. Further, it makes no reference to the views into the site that may be gained from nearby public footpaths (the Marsh Lane Track, and the path that runs beyond Shotley Marshes to the east of the site), and also the adjoining field. Also, and of significant importance, the site is wholly located within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB).
28. I turn here to the findings of the Inspector who, in 1996, determined the appeal against the enforcement notice issued against the appeal site. The site layout will clearly have changed since this time, although the then Inspector's observations are still relevant today given that he corrected the notice to allow for a maximum of 13 caravans on the land; in other words, the same number as is currently permissible by way of the 2019 LDC. In paragraph 21 of his decision letter, he states:
- "The appeal site can be seen from a number of sections of public footpath in the locality, particularly from the path which runs alongside the estuary. Caravans on most of the site are clearly visible in the countryside. Bearing in mind the large area of the site I think that the average of around 4 to 7 caravans scattered around it at weekends during the peak months of 1985 would have been relatively unobtrusive. On the other hand, an average of around 28 to 30 in 1995, at least some laid out in orderly rows, and most remaining all week, would have had a much greater impact on the appearance of the countryside."*
29. Aerial photographs show that, until recently, the caravans on the site were located towards its southern boundary. However, at the time of my site visit they were now concentrated in a more central location. The units, by and large, are more now the twin-unit mobile home type, as specified in the 2019 LDC. Although these are still caravans – and the site remains a caravan park – its character appears to be already changing, with the construction of a defined roadway, with kerbstones laid and identifiable individual curtilages created.
30. Whilst I accept that the use of the land as a caravan site would remain, in such circumstances the absence of any proposed site layout plan given the s192 application made, and its very nature, means that a standard assessment of the planning merits and/or impacts, as would be possible by way of a planning application, cannot be fully gleaned. Similarly, the flood zone issues at the site, cannot be formally assessed from the submission made. Here, I take the Council's point that the potential siting of an additional 13 static caravans, given the constraints, could necessitate their positioning at higher levels along the rising valley sides in more obtrusive points on the land. Alternatively, a high concentration of units in the central area might result.
31. Accordingly, I must also agree with the Council in its consideration that an intensification of the current use, to the degree proposed, would erode local landscape character and would have an urbanising effect which is likely to adversely affect both the landscape and scenic qualities of this part of the AONB. Further, I consider that due to increased activity and potential light

pollution, it could also impact on the tranquillity – an integral quality of AONBs – of the western bank of the River Orwell.

32. From the evidence adduced I consider that the proposed use would be materially more intensive than that realistically possible on the current restriction. I acknowledge that it is difficult to say at what number of caravans the change becomes material but, to double the number of caravans in this instance and thereby, in all probability, the activity on the site itself, with associated vehicular movements to and from the site would be factors of significance. When also factoring in the site's contextual setting within the surrounding landscape, the differences would markedly compound, and the character of the site would undergo a definable material change.
33. I must conclude, therefore, that a material change of use would result from the proposal, with increased planning consequences both on and off the site arising, and the Council's decision in the circumstances was well founded.
34. Accordingly, the appeal is dismissed, and I shall exercise my powers under section 195(3) of the 1990 Act, as amended.

*Timothy C King*

INSPECTOR