The Planning Inspectorate

Appeal Decision

Inquiry held on 26 July 2011
Site visit made on

by David Pinner BSc (Hons) DipTP MRTPI

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

Decision date: 16 August 2011

Appeal Ref: APP/M9496/X/09/2105897
Brosterfield Caravan Park, Foolow, Eyam, Hope Valley, S32 5QB

- 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 Tingdene Parks Ltd against the decision of the Peak District National Park Authority (NPA).
- The application Ref: NP/DDD/0708/0648, dated 18 July 2008, was refused by notice dated 16 December 2008.
- 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 the unrestricted all year round occupation of 20 caravans falling within the statutory definition (i.e. to include "park" homes.
- This decision supersedes that issued on 22 April 2010. That decision on the appeal was quashed by order of the High Court.

Decision

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

Preliminary matters

2. The parties agreed at the inquiry that the only aspect of lawfulness of the proposed use I should consider is whether that use is within the scope of a planning permission dated 30 November 1998, ref: NP/DDD/0497/156 (the 1998 permission).

3. As the appeal turns entirely on legal issues concerning the effect of the 1998 permission, it was not necessary for me to undertake a site visit.

The matters in dispute

4. The 1998 permission permitted the "change of use of part of agricultural land to caravan site". The permission was subject to 6 conditions, none of which sought to limit the type of caravan, the purpose for which any caravan might be occupied or the length of time any particular caravan could remain on site. There is a condition that restricts the number of caravans that might be on the site at any one time. These numbers vary depending on the time of year and are increased for Bank Holiday weekends. The maximum number of caravans

that could be on the site irrespective of the time of year or Bank Holidays is 20, hence the reference to that number in the application.

5. Notwithstanding the lack of any conditions to that effect, the NPA's case is that the permission is nevertheless restricted to touring caravans. Their reason for saying this is that the application was accompanied by an explanatory note, separate from the planning application form, headed "Planning Application for Brosterfield Farm, Foolow". In that explanatory note at paragraph 3, sub-paragraphs a and b, reference is made to touring caravans. The NPA say that the explanatory note is part of the planning application and the planning application was specifically incorporated into the planning permission by the words on the planning decision notice, which say "Notice is hereby given that permission for the proposed development *in the manner described on the application and shown on the accompanying plans and drawings* (my emphasis) is granted subject to the following conditions". The permission therefore only extends to the use of the land as a caravan site for touring caravans.

6. The essence of the appellant's case is that the planning permission is clear on its face and there is therefore no need to refer to any extraneous material in order to construe the planning permission. Planning conditions cannot be implied, nor can a planning permission be cut down by the application in a case where the permission is clear and unambiguous.

7. Both parties made extensive reference to case law. A distinction was made between cases where extraneous material had been examined in order to resolve an ambiguity in the planning permission and those where, by reference in to it in the permission itself, other material, such as the application and plans, had been incorporated into the permission. It was agreed that this is an incorporation case. The crucial matter in this determination relates to the status of the explanatory note. The NPA's view is that it is part of the application and therefore part of the planning permission, so it governs the scope of the permission. The appellant's view is that it is extraneous material that cannot cut down the scope of the planning permission, which is clear and unambiguous on its face.

Reasons

8. The kindest way I can put it is that the NPA's failure to impose conditions relating to the type of caravan, period of stay and purpose of occupancy was a serious error of judgement. A planning permission goes with the land and should be a document that can be relied upon by planning authorities, landowners, potential purchasers and anybody else, long after those involved in making or deciding the application have disappeared off the scene. A permission cannot be fettered by considerations of what an applicant thinks they applied for or what was in the minds of the Planning Committee members when they decided to grant permission. There should be a clear and unambiguous paper trail that allows anybody seeking such information to know what permission has been granted and what limitations or conditions apply to that permission.

9. A reasonable person looking at the 1998 planning permission should be clear that, to get all the necessary information about the planning permission, they would need to look at not just the piece of paper in their hands, but also at the description of the development on the application and at the accompanying plans and drawings. The permission itself refers to those additional

documents, thereby incorporating them into it. The plans and drawings are of no concern in this case, so the real question is what was comprised in the planning application?

10. At the time of the 1998 permission, the relevant regulations relating to planning applications were the Town and Country Planning (Applications) Regulations 1988. Regulation 3 prescribes that an application for planning permission shall:
    (a) be made on a form provided by the local planning authority;
    (b) include the particulars specified in the form and be accompanied by a plan that identifies the land to which it relates and any other plans and drawings and information necessary to describe the development which is the subject of the application; and
    (c) (not relevant to this appeal).

11. Given that the planning application is a public document, it is obviously desirable that an application should be clearly recognisable as such, hence the requirement that is should be made on a form issued by the local planning authority. In my experience, all such application forms contain the issuing planning authority's name and logo and a heading to make it clear that it is an application for planning permission to develop land. The NPA's application form at the time of the 1998 application was thus headed.

12. Question 2b of the application form requires the applicant to provide brief particulars about the proposed development. In this case, that is answered as "Change of use of agricultural land to part caravan site and part agricultural use". This description, to all intents and purposes, matches the description of the development on the planning decision notice, i.e. "change of use of part of agricultural land to caravan site".

13. It seems quite clear from the wording of the Regulations, that the application itself comprises only the application form. The plans, drawings and other information necessary to describe the development are accompanying documents and, as such, would need to be specifically referred to in order to be incorporated into the planning permission. In this case, the plans and drawings are referred to in terms on the decision notice and are therefore incorporated into the permission. No mention is made of the explanatory note and I conclude that it is not incorporated into the permission.

14. A conclusion otherwise would have quite severe implications for any planning permission. In particular, it would mean that nobody could rely on the description of the proposed development given on either the application form or the planning decision notice, even if no other document was referred to at all, because there might just be another document submitted with the application that contained a different description.

15. That is exactly what has happened in this case. The explanatory note, in two places, describes the proposal as being for a touring caravan site. The NPA says that the explanatory note was necessary to describe the proposed development. I disagree. It would have been a simple matter to insert the word "touring" in the answer to question 2b of the application form, so a further document purporting to insert that word was not necessary.

16. A further point is that a document such as the explanatory note may contain nothing that identifies it as an important document. For example, as in this case, it might not be on letter-headed paper. Although in this case it is a type-written document on good paper, in another case, it might just as easily be a hand-written note on the proverbial back of a cigarette packet. I think it is inconceivable that a planning permission and a planning application, both absolutely clear on their faces, could be overridden by some other, possibly nondescript document that happened to be sent in with the application. How would anybody looking at the planning permission decision notice know whether such a document existed or not? The only answer would be that specific reference is made to that further document either on the application form or in the permission, or both. Without such reference, it cannot be incorporated into either the application or the permission.

17. The NPA suggested that the 1998 permission would be invalid if the explanatory note were not to be incorporated into it because it would mean that the permission granted was more than the permission sought. That is not the case here. The permission granted matches the description of the permission applied for.

18. As the explanatory document was not incorporated into either the planning application or in the planning permission, in the absence of any conditions limiting the type of caravan, the length of stay or the reason for occupancy, I conclude that the NPA's decision to refuse to grant a LDC was not well-founded. I shall issue a Certificate accordingly.

David C Pinner

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr I Albutt	Of Counsel

He called:

Mr D Middleton BSc (Hons) MRICS	Partner. Charles F Jones and Son, appellant's agents

FOR THE LOCAL PLANNING AUTHORITY:

Ms J Wigley	Of Counsel

She called:

Mr A Cook BA(Hons)	Monitoring and Enforcement Manager, Peak District National Park Authority.