

APPEAL BY KNIGHTSBRIDGE PARKS LLP

NORTH FAIRGROUND SITE, VALE OF HEALTH, NW3 1AU

APPEAL REFERENCE: APP/X5210/X/18/3198526

**CLOSING SUBMISSIONS
ON BEHALF OF
THE CITY OF LONDON**

1. INTRODUCTION

1.1 The determination of this appeal will involve answering the following questions:

(i) What was the existing lawful use of the Appeal Site as at 31 July 2017?

(ii) Having determined the answer to question (i), would the use of the Appeal Site as a site for the stationing of seven static caravans for the purposes of human habitation have involved a material change of use had it commenced on 31 July 2017?¹

1.2 The burden in this appeal rests on the Appellant (“A”) to demonstrate, on the balance of probabilities, that the grant of a CLOPUD would have been well founded. As to question (i), in circumstances such as this where there is no planning permission or certificate of lawfulness, A must justify what it says is the existing lawful use through the provision of sufficiently precise and unambiguous evidence². Despite hanging its hat on a

¹ Inspector’s Pre-Inquiry Note

² The NPPG on Lawful Development Certificates requires “precise and unambiguous” evidence to justify the grant of a certificate on the balance of probability. (Paragraph: 006 Reference ID: 17c-006-20140306)

characterisation of the existing lawful use as that of a mixed use comprising a travelling showperson (“TS”) site and an ‘unrelated’ residential caravan site, notable features of A’s case have been the absence of corroborating documentary evidence and/or evidence from witnesses with direct knowledge of the happenings on the Appeal Site over the relevant period to support the purported continuous ‘unrelated’ residential use. It is also of note that in circumstances in which the burden of proof is on A, A’s own evidence is so sparse that it has been driven to rely in substantial part on evidence produced by others to support its case, most specifically LB Camden.

1.3 Having established the existing lawful use, question (ii) requires a ‘before and after’ comparison between the character of the existing lawful use and the character of the proposed use so as to determine, as a matter of fact and degree, whether the proposed use would be materially different. There is no place in this analysis for consideration of whether a change would be ‘good’ or ‘bad’. Instead, the question is whether the use would be materially different.

2 Question (i) – What is the existing lawful use?

2.1 The City submits that the evidence before this appeal points decisively to the existing lawful use as being that of a TS site alone. There is no dispute between the parties as to the lawfulness of the TS use of the Site. The issue for determination is whether A has demonstrated that there has been a permanent residential use of the site through occupation of caravans by those unrelated to the TS use alongside the TS use for a continuous period of ten years. The key period for consideration is 31 July 2007 – 31 July 2017 albeit earlier periods are also evidently of relevance³.

2.2 A’s evidence on this point is very poor and does not discharge the evidential burden.

A’s Witnesses

2.3 With regard to individuals with direct knowledge of the Site during the relevant period, A’s only direct evidence came from Mr Abbott Junior (“CA”). CA occupied the site

³ As accepted by Mr Laister in MEQC XX

seasonally from the age of six up until 2017 and during that period, his pattern of life involved travelling to fairs for 7-9 months of the year from Easter up to approximately November, living on the Site full time in the winter months, and coming back at weekly intervals in the travelling months to collect his post.⁴ Surprisingly, given that he was the only witness from the Abbott/Hayes family to give evidence, CA said that he had had nothing to do with lettings on the Site, was not personally involved with arrangements as to payment, and had never been in charge of operating and managing the Site.⁵ In the period up to 2011, CA said that Charlie Abbott (CA's grandfather) was in charge and after Charlie Abbott's death it was Cy Abbott (CA's brother), Charles Abbott senior (CA's father) and Mrs Cogger.⁶

2.4 In short, A's principal witness was not present on the Site for substantial parts of the relevant period and had nothing to do with the purported use of the Site by those 'unrelated' to the TS use. The lack of clarity and vagueness of his answers as to the nature and extent of occupation of the Site by particular individuals and their employment status, including the extent of their involvement in fairs was entirely consistent with his limited involvement with the Site.

2.5 With regard to the happenings on the Site, CA accepted that if there was any difference between what he remembered as to the nature and type of occupation on the Site and what his grandfather Charlie Abbott had said to LB Camden in the past, it would be fair to defer to what his grandfather had said as he was more knowledgeable about the Site.⁷

2.6 This is significant because the City submits that Charlie Abbott's comments on the nature of the Site are consistent with the site being in sole TS use rather than a mixed use that included an established 'unrelated' permanent residential caravan site use. In October 2005, Charlie Abbott signed and agreed notes written by a LB Camden officer, which described the Site as being occupied by residents who "*will only be there for a few days*" as the site was used as a "*staging post/amusement park*" where the "*situation changes on*

⁴ MEQC XX

⁵ CD XX and MEQC XX

⁶ MEQC XX

⁷ MEQC XX

week to week basis as family/firm go to different fairs".⁸ At that time, he is also reported as saying that all residents are either family or they "*worked on the fair*" or "*had links with his family or the fair in general*".⁹ He did not suggest that there was any permanent or unrelated residential occupation.

2.7 Similarly, during the 2010/2011 LDC application process, Mr Thuaire's site notes record that Charlie Abbott stated in a site visit interview that the 'unrelated' occupants of the site were all connected to fairs, either through employment or helping out. This close relationship between any temporary occupants of the Site and the travelling showpeople is consistent with CA's oral evidence that any other individual who occupied the site was a friend of the family, or friends of friends.¹⁰ The use of 'unrelated' as an adjective to describe residents other than the Abbott and Hayes family is therefore a misnomer. The evidence does not demonstrate that other occupants were unrelated to the Abbott and Hayes family or unrelated to fairs.

2.8 Even if continuity of 'unrelated' occupation over the ten year period can be established (which the City says it cannot as explained below), would the presence of individuals that CA might consider not to fall within his definition of travelling showpeople but who occupied the Site in connection with the Abbott family and the fairs take the Site out of single TS use in planning terms? The answer is no. Although CA sought to focus attention only on those who are members of the Showmen's Guild as falling within the category of a travelling showperson, he explained that women would not generally become members even if married to a male member. It cannot therefore sensibly be the case that membership of the Guild is definitive of the occupants of a TS site. And indeed, quite sensibly, national policy in respect of TS sites does not place focus on membership of the Showmen's Guild as the defining factor. The 2015 PPTS definition of travelling showpeople includes "*members of a group organized for the purposes of holding fairs, circuses or shows (whether or not travelling together as such)*...". It does not exclude non-Guild members, and does not exclude those who help out at fairs but who may have other employment alongside being a helper i.e. those 'unrelated' residents to which Charlie Abbott referred, to whom CA deferred in respect of knowledge of the Site and its

⁸ CT PoE App. 6

⁹ CT PoE App. 7 para 3.2

¹⁰ CD XX

occupants. Further, whilst the identity of occupants is unusually, of relevance in planning terms when dealing with a TS site this is because there is a symbiosis between the way of life of travelling showpeople and their specific land use needs, but it is the use of the land itself that must be focused upon in this appeal (as to which see further below).

2.9 Turning to continuity, in relation to periods of occupation, CA's evidence was not reliable. He was not precise as to start and end dates for occupants of the site. For example, he had made a "rough estimate" of the length of Mr Cadwell's presence on the site and when asked why he thought Mr Cadwell had started living on the Site in 2007, CA said he thought he had been there for "around 10 years" but that he tended to "round things up".

2.10 More significantly, CA accepted that when away for periods of time, he couldn't be sure if specific individuals identified as present on the Site in site survey 'snapshots' had in fact remained in residential occupation during those periods¹¹.

2.11 In summary, CA cannot assist A in establishing the required continuity of permanent 'unrelated' residential occupation of just one caravan let alone seven given his regular absences from the Site, lack of knowledge as to the lettings, and lack of involvement with operating and managing the Site.

2.12 As for Mr Laister, he was in no position to give evidence of fact as to the occupation of the Site and the existing lawful use given that his first visit to the Site was in summer 2019. Moreover, he hadn't conducted any interviews with occupants of the Site.¹² His observations regarding the status of particular occupants were mere speculation. No weight can be attributed to his evidence on existing lawful use, which necessarily relied upon CA's evidence.

The Site History

2.13 Turning to the history of the Site, its lawful use has been considered to be a TS site alone on a number of occasions:

¹¹ CD XX

¹² MEQC XX.

- (i) In the face of an argument by the Site owners that the lawful use of the Site was an “established residential use” in the planning appeal in 1998, Mr Thuaire’s evidence then was that the site was a TS site and nothing else¹³;
- (ii) In the 1998 appeal decision, the Inspector considered himself required to give a view on this point as a matter at issue and he shared LB Camden’s then view that the lawful use was “probably as winter quarters”¹⁴;
- (iii) Following a full enforcement investigation conducted by LB Camden between 2004 and 2005 in response to a complaint that the Site was “*being rented to the people on it on a month to month basis*”, LB Camden made a formal decision in October 2005 not to take enforcement action as the lawful use as a TS site had not materially changed - there had been no breach of planning control¹⁵;
- (iv) LB Camden conducted a visit to the Site in February 2006 and again decided that there had been no breach of planning control – the Site was “*being used as it was intended, a Travelling show people’s site...* ”¹⁶;
- (v) In 2010/1, Planning Aid for London, in advising the Abbott family as to their LDC application for a residential caravan site, took the view that it was “*still active showman’s quarters*”¹⁷.

2.14 Taken together, the views reached and determinations made over the years by a number of different planning professionals, do not support, and in fact directly contradict, A’s case.

The Site Survey/Plan Snapshots

2.15 With regard to the three site surveys (final versions dated October 2005, March 2011 and November 2017 respectively), the manner in which they were prepared is notable. Although they are the Council’s surveys, it is evident from CT’s evidence and the 2005

¹³ CT PoE App 4 paras 5.3-5.4

¹⁴ CT PoE App 5 paras. 9-10.

¹⁵ CT PoE App. 7

¹⁶ CT PoE App. 8

¹⁷ CT PoE App. 10.

delegated enforcement report¹⁸ that the information regarding the individuals said to be occupying the Site and their employment status was supplied by members of the Abbott family or their representatives. LB Camden did not conduct interviews with occupants of the Site other than the Abbots in order to populate the surveys. This is not any criticism of LB Camden but it does reduce the weight that can be attached to the surveys given the lack of independent verification.

2.16 Also, in relation to the 2011 survey prepared to support the withdrawn LDC application, the only survey to have been undertaken during the key period of July 2007-July 2017, the weight that may be attached to it is reduced further still. This is due to the fact that the Site owners then advisor, Mr Trehearne of Berwin Leighton Paisner, wrote to LB Camden to withdraw the LDC application on the basis that the “biggest problem” was that *“the Abbott family seems to have provided evidence both for and against the proposition of lawfulness, resulting in an evidential trail which is hopelessly confused and which, because some at least of the evidence seems to come from our principal deponent, questions the credibility of our core submissions”*. That hopeless confused evidential trail included the 2011 survey, which was informed by a discussion with the Abbott family, described by their own advisor as providing unreliable and contradictory evidence.

2.17 Mr Laister accepted that the surveys represented a “snapshot” in time¹⁹ but suggested that in circumstances in which some occupants, even if not the same occupants, were listed as present on the site in both March 2011 and November 2017, they had “probably been there”²⁰ for the duration of that period. When asked about the sufficiently precise and unambiguous evidence that he relied upon to account for the continuity of occupation in the time between the 2011 and 2017 surveys, Mr Laister said that he relied upon the surveys alone²¹. This was a tacit acceptance that he did not have any evidence upon which he could rely for this 6+ year period, which presents a significant barrier to A’s case.

¹⁸ CT PoE App. 7 para 3.2 – 3.5

¹⁹ In response to I’s q.

²⁰ In response to I’s q.

²¹ CD XX

2.18 Mr Laister's view as to the sufficiency of A's evidence was not reasonable. Unless the snapshots in time were supplemented with contemporaneous corroborating evidence or statutory declarations as to permanent residential occupation during the intervening periods, the City submits that A cannot demonstrate, on the balance of probabilities, the necessary continuity of 'unrelated' residential use.

2.19 Turning to the detail, as a matter of fact, Henrik Clarke was the only person to appear in all three surveys. Yet, there is no evidence to suggest that he was ever listed for council tax at the Site and there is no other corroborating documentary evidence to support continuity of occupation by him. Moreover, when asked about whether any occupants of the Site had a second home, CA referred to Mr Clarke's garage and said that he thought he might stay there some nights.

2.20 As for the others referred to in the surveys, Mr Dark and Mr Edwards appear twice (2011 and 2017). However Mr Edwards is referred to as 'empty' in 2011 suggesting that he was not occupying the Site at the time of that survey. Mr Dark is listed for council tax but only with effect from February 2014. Ms Gardiner and Mr Jensen appear twice (2005 and 2011) albeit their initial appearance in 2004 was later to be scrubbed out by Charlie Abbott in 2005 because they had apparently left the site by then. All others appear on a single survey. Rather than displaying the necessary clarity and precision, the evidence relied upon by A is replete with omissions and ambiguity.

Other Evidence

2.21 The council tax and business rates records do not assist A.

2.22 The business rates point to a site in sole TS use.

2.23 With regard to council tax, Mr Laister's suggestion that the fact that any of the caravans on a site of this nature were listed was a better position than one might expect was not of any assistance. It might be preferable for LB Camden's coffers for some, rather than no, caravans to be listed but that provides no support for continuous, unrelated residential use over the relevant period. Bearing in mind that the burden lies on A, the fact

that only two caravans (Robert Dark and Olga Abbott) were listed as at 31 July 2017, neither of which had been listed for the entirety of the preceding 10 year period, weighs against A's assertion of continuous unrelated residential use. As to the status of Olga Abbott, CA's evidence was that she still operated fair rides and/or stalls when he needed extra help. Although described as retired, CA's evidence suggests that she remains an active participant in the TS way of life.

2.24 In relation to the photographic evidence, the aerial photographs produced by Mr Eiser take matters no further forward for A. They are snapshots in time on unspecified dates that show the Site with vans and caravans on it. The photographs do not demonstrate that anyone was occupying any of the caravans at all and, even if they did, they provide no assistance regarding the identity of any individual occupier, as was accepted by Mr Laister²². As for Mr O'Neill's photographs, the assistance Mr Laister sought to derive from the (moveable) plant pots, footsteps in the snow and 'worn' paths was misplaced and far-fetched. These observations provide bare support for any residential occupation at all but certainly do not support continuous residential occupation. Moreover, the green-fingered plant owner and/or keen walker could be a resident showperson just as easily as an 'unrelated' resident.

LB Camden's Position

2.25 The position adopted by LB Camden requires comment on the basis that it is different to that of the City in this appeal. Mr Thuairé ("CT") was of the opinion at the time of the LDC application in 2010 that the Site was "probably"²³ in a lawful mixed use and he remains of that view now. However, the City submits that CT's evidence must be considered in the following context:

- (i) CT's description of the probable use in response to the LDC application was a mixed use of TS site and "other unrelated residents or empty uses" – the non-TS use element was not simply a residential use;
- (ii) CT's view was not a determination on an application for a LDC for such a mixed use. The LDC application made was not for a mixed use but for a sole residential

²² CD XX

²³ CT PoE App 11, Email of 20 January 2012.

caravan site use. As such, no formal determination was made by CT because he did not need to make one;

- (iii) CT quite fairly accepts that *“different officers could have reached different conclusions about the exact nature of the mixed use”*²⁴;
- (iv) Indeed, a different planner at LB Camden (John Nicholls) had come to a different view in October 2005 and March 2006 following a full enforcement investigation, enforcement delegated report and follow-up site visit;
- (v) In coming to the view that he did, CT must have considered the 10-year period up to the date of LDC application in 2010. He must necessarily have disagreed with the decision of John Nicholls on the basis of the evidence of the use of the Site between the period of 2000-2005/6, but that difference in view has not been explained;
- (vi) Planning Aid for London also reached a different view in respect of the LDC in that their advice to the applicant in 2011 was that the Site was “active showman’s quarters” with no mention of any other use;
- (vii) CT himself reached a different view, as did the Inspector, in the 1998 appeal.

2.26 With all due respect to LB Camden, and in the light of CT’s acceptance that a different officer might have reached a different view to his own, the City invites you to prefer its conclusions as to the existing lawful use.

The Omissions

2.27 Having considered the evidence that is available to the inquiry, it is helpful to reflect on some surprising omissions.

2.28 A, for reasons that neither Mr Laister nor CA could explain, chose not to take the obvious opportunity to seek evidence from other members of the Abbott/Hayes family, most notably Cy Abbott and Charles Abbott senior, who, in CA’s own words, knew far more about the Site than CA. Similarly, despite seeking to rely on occupation of the Site by a large number of named individuals in the site survey ‘snapshots’ including the

²⁴ CT PoE para. 5.22

occupations and way of life of those individuals, no evidence was produced from any of these people, be it attendance in person at the inquiry or a statutory declaration. It is obviously for A to decide what evidence it produces in a LDC appeal but the implications of that decision necessarily impinge upon the merits of its case. Here, A could have provided significantly stronger and clearer evidence but chose not to do so.

2.29 Further, there was a complete absence of contemporaneous documentary evidence from A in the form of tenancy agreements, receipts, invoices, bank statements and the like.

2.30 These omissions are all the more surprising in circumstances in which the Site owners have, with professional assistance, previously applied for and been refused a LDC on the basis of inadequate and conflicting evidence. Of course, A is a company and not the owners but A has called CA as a witness and could have called other members of the family. Further, one might have expected A to have asked the owners for documentary evidence. And, as a result of the outcome of the previous LDC application process, one might have expected the owners to have taken a more rigorous approach to preparing and retaining documentary evidence in respect of the use of the Site.

2.31 Instead, the approach by A to this LDC application has been to place reliance on the Council's view as to the 'probable' existing lawful use dating back to the 2010 LDC application rather than to supply sufficiently precise and unambiguous evidence of its own to support its position.

2.32 Most damning of all, A's own witness Mr Laister said that the evidence submitted did not accord with the quality of evidence that he would have advised A to produce if he had been asked to assist at an earlier stage in proceedings.²⁵

2.33 In the end, the omissions do not assist A because the burden of proving that the existing lawful use includes an 'unrelated' residential caravan site use is on it, and it is not LB Camden but the Inspector who will come to a conclusion as to whether that burden has been discharged.

²⁵ CD XX

2.34 To conclude this section, the City submits that A's evidence falls far below the threshold required to demonstrate, on the balance of probabilities, a continuous 'unrelated' residential occupation of one caravan on the Site let alone the seven suggested by A.

3 Question (ii) Having determined the answer to question 1, would the use of the Appeal Site as a site for the stationing of seven static caravans for the purposes of human habitation have involved a material change of use had it commenced on 31 July 2017?

3.1 The second determinative issue is whether, having established the existing lawful use of the Appeal Site, its use as a site for the stationing of seven static caravans for the purposes of human habitation would have involved a material change of use had it commenced on 31 July 2017.

3.2 On the basis of the City's case under question (i), the comparison to be undertaken under question (ii) is between a TS use alone and a residential caravan site comprising seven static caravans.

3.3 The evidence as to the specific nature of the TS use of the Site comprises the following features:

- (i) A site with peripatetic residential use by showpeople²⁶;
- (ii) A site in flux – CA accepted that 'things' moving about on the Site was a fair representation of the nature of its use, and that caravans would be shifted at will to make space for equipment²⁷. This is corroborated by CT who said that the site "varies" and that he had been on the Site when it was "half empty"²⁸;
- (iii) A site where cleaning, maintenance and repair of fairground equipment would take place and where equipment would be stored – The storage element is evident from Mr O'Neill's photos as confirmed by CA. CA described doing maintenance and repairs in a fairground stall and explained in detail the maintenance and

²⁶ CA MEQC XX

²⁷ MEQC and DA XX

²⁸ MR XX

cleaning arrangements for a bouncy castle when it was on the site, which needed space and a flat surface²⁹.

3.4 The City submits that this mix of uses is an orthodox example of a TS site as set out in Government policy, which refers to the “*unusual*” nature of such sites in land use planning terms with their combination of “*residential, storage and maintenance uses*” and the enabling of the “*effective storage and repair of significant amounts of equipment*”.³⁰ Mr Laister accepted that the storage, cleaning, maintenance and repair element of the use as described in evidence was a “*classic example*” and “*characteristic*” of a TS site land use³¹. Looking further back into the site history, when asked about the view reached by both the Council and the Planning Inspector that the Site was in TS use at the time of the 1998 planning appeal, Mr Laister again accepted that on the basis of the description of the site at that time, he would have considered the Site then to be in a classic TS use³².

3.5 The distinction in land use planning terms between a TS use and use as a residential caravan site is recognized both in national policy (See PPTS 2015 and its reference to “mixed-use plots” for TS sites) and in case law. In *Winchester City Council v SSCLG* [2013] EWHC 101 (Admin), the High Court described a TS site as a “distinct and narrower use” to that of a residential caravan site (para. 47) and further that a TS site “*may be a significant and separate land use in planning terms*” (para. 41). Philip Mott QC (sitting as a deputy High Court judge) also said the following:

“...there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site.” (para. 40)³³

3.6 The City submits that the distinction between the two uses must, in reliance on the case law, necessarily be material. A’s implicit attempts, through comments from both Mr Rudd and Mr Laister, to distinguish this case from *Winchester* by referring to the absence

²⁹ MEQC XX

³⁰ See Circular 04/2007 paras. 4 and 9.

³¹ MEQC XX

³² MEQC XX

³³ It is of note that the Court of Appeal upheld the High Court’s decision and said nothing further in relation to the High Court’s position as to the nature of TS use and its significance in planning terms.

of a planning permission in relation to the Site were not well-founded. The principles set out by Mr Mott QC in the High Court are not contingent upon the presence of a planning permission and the City submits that those principles apply equally to an established lawful use as to a use established through the formal grant of planning permission.

3.7 The distinction is reinforced by the different legislative treatment accorded to residential caravan sites as compared to a TS site.³⁴ Whereas an authorised residential caravan site will enjoy permitted development rights consequent to the grant of a caravan site licence, a TS site is neither eligible for a caravan site licence nor, necessarily, is it able to enjoy PD rights that would otherwise come with the grant of such a licence. Given that Mr Laister's evidence was that if the LDC were to be granted, he would expect an application for a site licence to be made and granted, the comparison between the situation at present and the future use of the Site ought necessarily to take account of the probability of permitted development rights when considering the materiality of the proposed change.

3.8 On the basis of national policy, case law and the distinction in statute between a caravan site and a TS site, a change of use from TS use to a use for the siting of seven static residential caravans would be a material change requiring planning permission. This was accepted by Mr Laister who said that in circumstances in which the Inspector were to find that the Site's lawful use is an active TS use, the proposed use would be materially different³⁵. In other words, if the Inspector agrees with the City as to (i), all parties agree that the appeal should be dismissed.

3.9 In the alternative to the above, should the Inspector find that the existing lawful use is a composite mixed use of a TS site and an 'unrelated' residential caravan site, the City submits that a change from that formulation of the existing use to the use proposed would still result in a change that is significant and material.³⁶ The analysis of question (ii) on this alternative basis will be comprehensively considered in the submissions of LB Camden. Suffice to say, Mr O'Neill's view as to the materiality of the change is consistent with that of LB Camden.³⁷

³⁴ PONEill Response to PoE of Mr Laister, paragraph 11

³⁵ CD XX.

³⁶ SEE PON paras x and y.

³⁷ PONEill PoE paras. 5.12-5.22.

4 CONCLUSION

4.1 On the basis of the above, the City invites the Inspector to dismiss the appeal.

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