PINS REF: APP/X5210/C/17/3198526
LPA REF: 2017/4346/P

APPEAL BY KNIGHTSBRIDGE PARKS LLP

RE: LAND AT NORTH FAIRGROUND SITE, VALE OF HEALTH, LONDON, NW3 1AU

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. The Appellant applied under s.192 of the 1990 Act for a certificate of lawful use for the stationing of seven caravans for residential use. Nothing further was or is sought by way of operational development, site layout or otherwise and a grant of the certificate sought would not authorise any operational development. What is sought is essentially a declaration that the stationing of 7 caravans for residential use, which could equally be occupied by showpeople as non-showpeople, would not be outwith that accepted to be the current lawful use of the land, that is it would neither be a change of use nor alternatively a material change of use.

2. The Council failed to determine that application, the subsequent putative decision stating that the use of the land for seven static caravans for residential occupation would represent a material change of use from the accepted lawful use comprising a mixed "'***showpersons' site' use and a residential caravan site use***".[1] The lawful use is not described in any more a specific way beyond that of a mixed showperson and residential site. That conclusion was arrived at by the Council on the basis of the use having become immune from enforcement by 2012 and having continued, or alternatively not having been

[1] SoCG para 2.6, CT PoE para 5.36.

abandoned or lost once established through to the date of hearing of the application and indeed appeal.[2]

Nature of the Accepted Lawful Use

3. In order to determine whether the proposed use would fall within that provided for by the accepted existing lawful use, or if not whether it would amount to a material change of use, it is necessary to first define the scope of the existing lawful use.

4. Currently, the use of the land does not benefit from planning permission or a lawful use certificate. As set out in the Statement of Common Ground it is accepted that the site has been used by the Abbott family since the 1950's. The family have and do live on site in caravans, they are travelling showpeople and have used the land over the years for the parking of cars and vehicles and for equipment storage. Members of the family have also retired over the years and have not used the site for the storage or maintenance of equipment. Further, it is agreed that as well as caravans being occupied by travelling showpeople there have been a not insignificant number of caravans on the land occupied by non-travelling showpeople. The level of this use is not such that the Council consider it to be de minimus, hence the finding of a mixed residential use. It could not be ancillary to the showperson use as the occupation of some of the caravans has been on a basis entirely unrelated to the showperson use and certainty would not fall into the requirement that the occupiers of those unrelated caravans were part of an organised group that have come together for the purposes of holding fairs.

5. CT in XX confirmed that the use considered by the Council to be lawful has continued throughout the appeal process, indeed it was considered to have

[2] Confirmed by CT in XX. See also ***Thurrock BC v Secretary of State for the Environment)*** [2002] JPL 1278; ***Panton & Farmer v Secretary of State for the Environment, Transport and the Regions*** (1999) 78 P&CR 186 QBD. See *Panton* at 193 where the court followed the line of authorities in ***Hartley v Minister of Housing and Local Government*** [1970] 1 Q.B. 413 CA (Civ Div) at 420E-421B (Lord Denning M.R.); ***Newbury DC v Secretary of State for the Environment*** [1981] A.C. 578 HL at 598-599 (Viscount Dilhorne) and 616-617 (Lord Scarman); and ***Pioneer Aggregates Ltd v Secretary of State for the Environment*** [1985] 1 A.C. 132 HL at 143-144 (Lord Scarman).

become lawful in 2012 and has continued ever since. CT first visited the site in 1996 and has intimate knowledge of the nature of the on-site activities over the years posy about 2004/05.

6. The evidence before the Inquiry, acknowledged by CT to be correct and representative of the continuing situation on site[3] indicates a consistent level of caravans in excess of 15, a variation of showpeople of between 6 and 11, non-showpeople of 9 and 12 and with there always being an element of retired showpeople. Mr Clarke has been ever present since 2004/5, Mr Jensen and Ms Gardner were present in 2004/05 and again in 2010/11 and Mr Darke and Mr Edwards present in 2010/11 and 2017. There is no necessity for the number of caravans to be consistent or for their location to remain fixed and no necessity for the same people to have occupied the site. The reality is that since 2004/05 the site has been occupied by a mix of showpeople and non-showpeople.

7. The site visit notes from 2004/05, 2010/11 and 2017 may only provide a snap-shot of the use of the site, but the continuity of occupation between those two snap-shots, together with the various aerial and site photographs covering the intervening years, the detailed evidence on oath of CA and CT clearly establish, on the balance of probabilities the continuity of the use.

8. It is of course trite that given a lawful use for caravans is accepted by the Council those "*caravans*" can be touring caravans, 20ft static caravans or indeed twin unit mobile homes.[4] All meet the relevant statutory definition and all would be lawful under the currently accepted position. There being no restriction on numbers, type or layout then any number of caravans that meet the relevant statutory definitions can be stationed on the site, in any layout and in any mix of showperson and non-showperson occupation.

[3] CT App 6 (2004/05), App 9 (2010/11), App12 (2017)

[4] The statutory definition of a caravan is to be found in two provisions, the Caravan Sites and Control of Development Act 1960 at s.29 and the Caravan Sites Act 1968 at section 13. The House of Lords in ***Wyre Forest District Council v Secretary of the State for the Environment*** [1990] 2 A.C. 357 concluded that the phrase '*caravan*' in a planning permission should bear the statutory meaning set out in the CSCDA 1960.

9. In summary, the lawful use of the land, in land use terms, is the mixed use identified by the Council; that of a showperson use and non-related residential use. This may provide ostensibly for the stationing of caravans for residential occupation, the parking of vehicles and potentially, but not necessarily, the storage and maintenance of equipment, a matter I will return to. It is not exclusively a site for travelling showpeople.

10. In land use terms it matters not who occupies the caravans, the residential occupation of a caravan by a member of the travelling community is no different to that of a member of the settled community. What matters is the physical manner in which the land is being used and whether the proposed use is already provided for, and if not would it be materially different. It is in land use terms that the appeal must be determined, not by reference to a descriptor applied to some of those who live, or have lived on the land.

11. Determination of the nature of the non-showperson residential use is uncomplicated. What then may comprise a showperson use? I say may, as what must be determined is the potential extent of the existing lawful use, not the particular, and accepted by the Council and third parties to be highly variable, specific activities that have been present on the site that have resulted in the conclusion that a part showperson use is lawful. The council have not gone to the extent of declaring the lawful use to be a mixed use comprising the residential occupation of caravans by showpeople and non-showpeople, and detailing the other activities that comprise that mixed use. That is entirely understandable given the highly variable nature of the activities associated with a showperson use.

12. The terms "*showperson site*" is commonly used and indeed was the nature of the permitted use in the ***Winchester City Council*** case. It is a sui generis use and necessarily involves a potential variety of activities. This is not elevating the term to a use class in its own right but it is recognising the term has a *functional significance*, as found by the courts in the ***Winchester City Council*** matter. If the term has a functional significance then it must be capable of defining a lawful use. The Council in this case use the term "'***showpersons'***

site' use" to describe one element of the accepted mixed use. There is thus a functional significance to the use of the term in determining what has been established as being lawful which must be examined.

13. It then becomes necessary to determine the proper extent of a "*showperson*" use of land. Showpeople can cease work, temporarily under the current national policy[5] and permanently under previous circulars going back as far as 1991,[6] historically for any reason and more recently for purposes of illness, retirement, and education.

14. There has been unchallenged evidence that a number of retired showpeople have lived on the site for extended periods, showpeople that no longer had any need for storage and maintenance of rides, their needs being purely residential. There has been further evidence from the Council that those who have lived on the site and been classified as helpers or workers on the fairs, who have no equipment of their own or need for storage and maintenance space are also to be considered to be showpeople. There has been further evidence that the showpeople who attend the Winter Wonderland in Hyde Park and who have lived on site over the years do not bring equipment onto the site, their needs also being purely residential.

15. Indeed, showpeople may not have rides and only operate those owned by others, they may store their rides elsewhere, which is not uncommon, they may lease rides owned by others, they may only have side shows and stalls that require little or no maintenance, they may have no equipment (fortune tellers, those who guess ages, young adults who are not yet able to afford their own equipment), they may be circuses with no equipment to store or maintain, or circus performers/artists, or they maybe circuses with animals.[7] As such, flexibility is a complete necessity when determining what might constitute a showperson residential use of land, and there can be no necessity for showpeople sites to have rides and equipment stored and maintained on site.

[5] PPTS August 2015 Annex para 3.
[6] PPTS March 2012 Annex para 2, ODPM Circular 01/2006 at para 15, DCLG Circular 04/2007 para 1 and para 15, Circular 22/91 para 2.
[7] DCLG Circular 04/2007 para 3.

16. There can be no requirement or expectation of the storage and/or maintenance of equipment and rides, such would then preclude those without equipment, and not all showpeople have equipment or have the need to store and maintain equipment on the same site as they reside. If the site was used by a mix of retired showpeople with no equipment or rides and unrelated non-showpeople, such a use would not be outwith that considered by the Council to be lawful.

17. The concept that where there is a lawful showperson use, defined in the description of development as a showperson use, the cessation of travelling and the consequential lack of equipment storage and maintenance would be a change of use is erroneous and there is no judicial or appeal decision support for such a proposition. Where a showperson use has been permitted then any use that falls to be properly considered to be a showperson use, as set out already, would not be a change of use let alone a material change of use.

18. On a correct interpretation of what is provided for by the accepted lawful use, as described in the putative decision, that may range from an entirely residential use, in land use terms (albeit one used at least partially by those who could be considered showpeople however defined), to a mixed residential and parking/storage/maintenance use.

19. In assessing the lawful use of the site the Council have quite rightly not attempted to determine the number of caravans that can be stationed for residential purposes, the ratio of showperson to unrelated residential use, the extent of any vehicle and equipment storage, parking, and maintenance, all aspects of which could or may be part of a showperson use, and all elements of the wider showperson use that has taken place on the site. In taking the approach that the lawful use is in part a showperson use this recognises the significant variations that can occur in a showperson site, and indeed have occurred on this site.

20. Both uses as described at paragraph 18 would represent the opposite ends of the scale of permitted lawful uses, but lawful uses nevertheless, with all

combinations of activities between these two end points of the range self – evidently being lawful. This does not elevate the term "showperson site" to a use class in its own right but properly recognises the functional significance of the words used and the degree of variation necessary in deterring what such a use might lawfully comprise, which in this case is only part of the accepted mixed use.

21. In such circumstances the use of the site for the stationing of seven residential caravans, which sits firmly on that scale of lawfulness, is already provided for under the existing lawful use and the refusal of the sought certificate was unfounded.

Proposed Use – Materially Different to Established Use?

22. If the proposed use should be found to fall outside of the range of uses permissible under the wide scope of that provided for by the declared lawful use, thus amounting to a change of use, then it is necessary to determine whether the proposed use would be a material change of use.

23. When assessing the baseline from which to determine materiality it is important to recognise that under the existing lawful mixed use as acknowledged that use could comprise a residential use by one retired showperson with no equipment together with several non-showperson. That would be a mixed use for travelling showpeople and non-showpeople. That would also define the character of the use of the land, that ostensibly being a caravan site.[8] That character would not change as the ratio of showpeople and non-showpeople changed. That essentially dispenses with the arguments related to the series of ***Wipperman*** cases, given the extent of permissible activities under a showperson use the loss of one or more elements cannot amount to a material change of use where those elements need not be present on a showperson site.

[8] The 1968 Act defines a "caravan site" at s.1(4) which provides: *(4) In this Part of this Act the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.*

24. In ***Winchester City Council v SSCLG***,[9] neither the Administrative Court nor the Court of Appeal held that a change of change of use from a travelling showpersons site to a residential caravan site was a material change of use. In the Administrative Court Phillip Mott QC at [41] held that it may be, with the emphasis added by the court. Sullivan LJ held that in the specific circumstances of that case it would be a change of use [19] but not necessarily a material one [27]. However, in this case we are not dealing with a travelling showperson site but a mixed use, and that is significant when determined the range of lawful uses and the materiality of any change from that baseline.

25. In circumstances where it is found that the use by non-showpeople alone is not provided for under the existing lawful use then such a use must be a change of use. However, in terms of the definable character of the use of the site, as evidence by the actual use of caravans, there can be no change between occupation by 7 non-showpeople in static caravans and a combination of showpeople with no equipment and non-showpeople, and as such the change in use is not material in this regard.

26. Other claimed impacts are relied upon by those opposing the appeal to support the argument of a material change of use; impact on openness, traffic impact, noise impact and light impact. Given the description of development that is accepted to be lawful, the assessment of these impacts must inevitably all relate back to the use existing lawful use, as properly interpreted, not the actual highly variable lawful use as evidenced by photographs and site notes.

27. Taking the starting position as already adopted, of one caravan, or indeed a limited number of caravans, occupied by a showperson with no equipment and a larger number of other caravans occupied by non-showpeople there is no reason to conclude that there would be any material change in levels of traffic movements, light on site or noise. All caravans would be occupied on a residential basis, with the same range of daily needs. Removing the

[9] [2013] EWHC 101 (Admin) and [2015] EWCA Civ 563

showpeople element and replacing that element with non-showpeople would not actually be noticeable, the change of use again not being material.

28. The Court of Appeal in ***Turner v SSCLG***[10] considered the relationship between openness and visual intrusion in a matter where the appellant wished to exchange caravan and lorry body type development (mobile) for fixed permanent development. This current appeal does not relate to the proposed exchange of transient development for permanent development. The appellant had put his case on the basis of the traditional orthodoxy as established by Green J in ***Timmins v Gedling Borough Council***,[11]where he held it was wrong to elide the principles of impact on openness and visual impact, the issue in respect of openness being solely the quantum (or absence) of development. Rejecting the traditional orthodoxy Sales LJ at [23] and [25] stating:

> "*23….the concept of the openness of the Green Belt has a spatial or physical aspect as well as a visual aspect, that statement is true in the context of the NPPF as well, provided it is not taken to mean that openness is only concerned with the spatial issue. Such an interpretation accords with the guidance on interpretation of the NPPF given by this court in the Timmins and Redhill Aerodrome cases….*
>
> *25….This remains relevant guidance in relation to the concept of openness of the Green Belt in the NPPF. The same strict approach to protection of the Green Belt appears from para. 87 of the NPPF. The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new or materially larger building there. But, as observed above, it does not follow that openness of the Green Belt has no visual dimension…*"

29. This approach was further confirmed in ***Samuel Smith Old Brewery (Tadcaster) (An Unlimited Company) and Oxton Farm (An Unlimited Company) v North Yorkshire County Council and Darrington Quarries***

[10] [2016] EWCA Civ 466
[11] [2014] EWHC 654 (Admin)

Limited[12] and ***Goodman Logistics Developments (UK) Limited v SSCLG & Slough Borough Council***.[13] Any impact on openness must be assessed

30. There does not appear to be any dispute that the historical established use of the site has involved up to 20+ caravans, and indeed the acknowledged lawful use does not constrain the type or number of caravans that can be stationed on the site for residential purposes. It is difficult in these circumstances to conceive of how 7 static caravans can, by virtue of quantum of development, have a greater impact on openness than 20+ caravans, such is not a credible conclusion.

31. In terms of visual impact, the stationing of seven static caravans on the site will be no more intrusive than the stationing of 20+ caravans on the site, together with associated vehicles. In reality taking both quantum of development and visibility the impact on openness will at it worst remain the same, not adding to any claimed materiality of change.

32. Finally, it cannot be properly claimed that the site performs a legitimate planning purpose in terms of a travelling showperson use. It is not an allocated showperson site, has no formal permission as such and the acknowledged lawful use permits a significant degree of non-showpeople use. If it does perform a legitimate planning purpose it can only be in very limited terms, and a grant of a certificate for the stationing of seven static caravans would not in any way preclude the use of the site for travelling showpeople.

33. In summary, if it is found that the acknowledged lawful use does not provide for the stationing of seven static caravans for residential purposes, then it is submitted that the change of use is not a material change of use and the sought certificate should be granted.

[12] [2017] EWHC 442 (Admin)
[13] [2017] EWHC 947 (Admin)

Michael Rudd

Kings Chambers

Manchester-Birmingham-Leeds

18th December 2019