



## Appeal Decision

Hearing held on 12 July 2023

**by Zoë Franks Solicitor**

an Inspector appointed by the Secretary of State

**Decision date: 12 SEPTEMBER 2023**

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**Appeal Ref: APP/X3540/X/22/3299754**

**Phase 3 site, Tingdene North Denes Caravan Site, Lowestoft, Suffolk, NR32 1XG**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Tingdene (North Denes) Limited against the decision of East Suffolk Council.
  - The application ref DC/21/5671/CLP, dated 17 December 2021, was refused by notice dated 11 April 2022.
  - 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 for the use for the siting and human habitation of touring caravans and motorhomes for holiday purposes.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.

#### *The site*

3. The site (referred to as Phase 3) is approximately 0.91Ha of land to the north of the Tingdene North Denes Caravan Park. It has not been used for the siting of caravans for quite some time and is currently fenced.

#### *Planning history*

4. The site has a fairly long and complicated planning history, and has in the past been part of a much larger area used for camping purposes. The most relevant elements of the planning history for the purposes of this appeal are:
  - Planning permission reference W3234 dated 24 November 1975 for "Camping Site, Roadworks and Lighting etc, North Denes, Lowestoft (from Oval to Links Road)" ('the 1975 Permission');
  - Deemed planning permission reference W3234/7 dated 3 May 1984 for "Use as seasonal tenting and touring caravan site (500 pitches), North Denes Camping Site, Lowestoft ('the 1984 Permission'); and
  - Appeal reference APP/X3540/C/19/3232207 dated 18 May 2021 which dismissed an appeal against an enforcement notice which alleged operational development on the site ('the 2021 Appeal').

5. The only condition imposed on the 1975 Permission required commencement of development within 5 years but Condition 1 of the 1984 Permission provides that there shall be no caravans or tents on the site at any time between 30 October and 31 March (or Easter, whichever is earlier).

#### *1975 Permission*

6. The parties agreed that the 1975 Permission covers the appeal site and that it was implemented. However, they disagree as to the scope of the use permitted as the appellant argues that the description of a "Camping Site" includes touring caravans and that this is how it was in fact used, and in evidence produces a postcard which pre-dates the 1975 permission, but which they say shows touring caravans on the appeal site.
7. There is disagreement regarding whether the Council previously accepted that the 1975 Permission allowed touring caravans but the Council's position now is that it did not. This in itself is not conclusive and the purpose of the statutory provisions regarding LDCs are to enable the making of objective decisions based on the best facts and evidence available when the decision is taken, and fresh evidence can be considered. It is for the appellant to prove their case on the balance of probabilities.
8. The inspector dealing with the 2021 Appeal did not specifically deal with whether he considered that the 1975 Permission allowed touring caravans, but rather stated that as a matter of fact there was not a site licence issued under the Caravan Sites and Control of Development Act 1960 and so the works could not be permitted development under Schedule 2, Part 5, Paragraph B of the GPDO.
9. It is clear that at various times there have been differing opinions regarding whether touring caravans were permitted on the appeal site, and it is not a straight-forward matter to say that they definitely were not. I do not place great weight on the postcard provided as it pre-dates the 1975 permission, and does not show the whole of the area covered by the appeal site. The most that it shows is that as a snapshot in time some touring caravans were parked on the most southerly part of the appeal site on a day before September 1974.
10. Caselaw<sup>1</sup> tells us that the correct approach when interpreting a planning permission is to consider what the reasonable reader would understand the words to mean in the context of the permission and with common sense. The basic rule is that a permission should stand by itself and the meaning should be clear within the four corners of the document.
11. The Council referred to internal memos which appeared to confirm that Council officers at that time understood the 1975 permission to allow tents only notwithstanding that it is evident that 'motor caravans and trailer tents'<sup>2</sup> were also permitted to use the site as falling within "a grey area". However, this is only evidence of the view of these individual officers and does not necessarily reflect the actual scope of the permission. Whilst a pragmatic approach can be taken in order to resolve ambiguity on the face of a planning permission and to consider extrinsic evidence this will often be the application form and supporting documents, and depends on the circumstances of the case. The

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<sup>1</sup> Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74

<sup>2</sup> Memo from Planning File dated 16 June 1981

memos referred to by the Council post date the grant of permission and do not aid in the interpretation of it.

12. Given that I have little in the way of supporting evidence to show how the site was generally used following the grant of permission, or anything relevant from the application or supporting documents, there is no choice but to interpret the description of development using the principles set out in caselaw. My understanding of the description, taking into account the natural and usual meaning of the words is that the description of "Camping Site" in the absence of a further clarifying description or conditions within the permission, includes the holiday use of tents and touring caravans.

*Material change of use*

13. As I have found that caravans were permitted by the 1975 Permission it is then necessary to consider whether there was a subsequent event by which the lawful use rights were lost, be that a material change of use, either with the grant and implementation of the 1984 Permission or through another event.
14. The appellant argues that the 1984 Permission had not been implemented because it was not in fact required. The Council hold that the 1984 Permission was for a materially different use because it authorised caravans to use the site for the first time and restricted the use to a seasonal basis and could only be used by the local authority. The Council's case is that these three elements together meant that it was a materially different development to that provided by the 1975 Permission.
15. Whilst I may have been persuaded by the Council's argument if I had found that the 1975 Permission restricted the use to tents only, I am not persuaded that the imposition of the seasonal condition alone is sufficient in this case and in this location (in particular as it adjoined the wider camping and caravan sites) to lead to a material change of use. The 1984 Permission was akin to a personal permission in that it was a deemed permission under the Town and Country Planning General Regulations 1976 so that it enured only for the benefit of the local authority, but this also would not have affected the material character of the use.
16. The Council further argue that at some point during the early 2000s (and prior to the first Note on Implementation North Denes Caravan Site dated 7 September 2006) the use of the site for camping and caravanning permanently ceased. They state that from at least that date, when there was a public declaration of the Waveney District Council's intention to use the site as public open space, there was a material change of use which was further confirmed by the designation of the land as such in the subsequent Waveney Local Plan (adopted in 2011).
17. The mere cessation of use is not development. I accept that in this case, where planning permission was granted and implemented then the use would need to be extinguished by another use or event.
18. Use of land as public open space can be a planning use but there was not an express planning permission granted in this case. The appellant argues that there was not a material change of use because no development took place which required planning permission. As such, the permitted use which can be

resumed now was the previous lawful use before the Council stopped allowing it to be used for camping.

19. For a material change of use to have occurred, there must be some significant change in the character of the activities from what has gone on previously as a matter of fact and degree. A photo of Area A in the Note on Implementation, which shows part of the appeal site, shows a predominantly clear grassed area (although again only showing a snapshot in time). The land was open and access was possible onto the wider site which had previously been used for camping from various points including the coastal path, and this is not disputed by the appellant.
20. Whilst it is possible to have some public use of a caravan or camping site as open space alongside the residential holiday use, the overall character of the use of the appeal site would have been very different when it was used for tenting and caravanning (even seasonally) compared to when it was used solely as public open space. The character of the use would have changed in many ways. The appearance of the site would be very different without camping apparatus as would the effect on character and appearance of the area. The number of people visiting the site, the activities being undertaken (e.g. eating and socialising when in camping use) and the duration of the individual visits and hours of use would also be materially different. In addition, a camping use is likely to involve a higher number of vehicles parking for longer periods and an increase in the comings and goings in the vicinity during increased hours of the day and evening. The change from camping to public open space would be material based on the character of the use and impact on the surroundings, albeit that the effects on the surrounding area would be likely to be reduced when the site was used as public open space.
21. Taking account of the Council's public declarations that the site was to be public open space and designation as such in the development plan, along with the clear public interest in the site and the open access and location of the appeal site between the sea and coastal path and the recreation area and wider area of public open space, I find that on balance the site was more likely than not used as public open space and a material change of use did occur.
22. As there was not an express permission for a change of use to public open space it is necessary to understand when such a change occurred. The Council have not provided an exact date for the change of use but their argument means that it must have been by 7 September 2006 at the latest, so that the unauthorised change of use would have become immune from enforcement action by 6 September 2016. Neither party have argued that the site was in fact used for camping at any point after 2006, and the appellant accepts that it was used as public open space but rather argues that this is not inconsistent with a camping use. However, I do not accept this as a matter of fact and degree in this case as the camping use had ceased and, for the reasons as set out above, the character of the use as public open space was materially different. The site was fenced by the appellant but this was later on in order to facilitate the operational development which was the subject of the 2021 Appeal.
23. Where there has been a material change of use, it is not lawful to revert to the previous use without a further permission unless there has been an

enforcement notice issued.<sup>3</sup> This has not happened in this case. A reversion to the previous use in any other circumstances is still unauthorised and constitutes a further material change of use. Notwithstanding that the Council have said that they could themselves reinstate the use permitted by the 1984 permission, this is incorrect based on the facts of the case and the material change of use to public open space.

24. For the reasons as set out above, any use of the appeal site for camping now would be a further material change of use and would require express permission. This is the case irrespective of whether the 1975 or 1984 Permission was the last authorised camping use on the site. Whether the 1984 Permission was implemented and the effect of the seasonal condition restricting the camping use on the later condition is therefore not relevant in this determination. It also is irrelevant as to which local authority owns the freehold of the site or is the local planning authority for the area, as it is not possible to revert to the camping use irrespective of whether or not the 1984 enured only for the local authority.

### **Conclusion**

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use for the siting and human habitation of touring caravans and motorhomes for holiday purposes was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Zoë Franks*

INSPECTOR

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<sup>3</sup> Section 57, Town and Country Planning Act 1990