Case Name: *Haytop Country Park Ltd v Secretary of State for Housing, Communities And Local Government & Anor* [2022] EWHC 1848 (Admin) (15 July 2022)

Full case: Click Here

Commentary: This was an unsuccessful appeal under section 289 of the Town and Country Planning Act 1990 against the decision of an inspector to dismiss the appellant's appeal against an enforcement notice concerning operational development carried out at Haytop Caravan Park, Derbyshire.

Haytop was first established as a caravan park in the 1950s, following the grant of planning permission in 1952 for the use of the site for 30 mobile dwellings and one wooden bungalow. A subsequent permission was granted in 1966 authorising the extension of the existing site from 30 to 60 caravans.

Following the acquisition of the site by Haytop Country Park Limited, the company carried out the following works, as detailed at paragraph 15 of the judgment:

"15. The site has been laid out to provide 23 new caravan bases, accessed off a newly created internal road as identified on [the Operational Development Notice]. Terraces stepping up the hillside have been formed to provide a level platform associated with each base. These are retained by gabion walls of various heights. Services have been provided…"

In March 2019, Amber Valley Borough Council issued an enforcement notice stipulating that the company must return the site to its previous condition.

A planning inspector dismissed the company's challenge, which was primarily based on the argument that the works that had been carried out were permitted development (within Class 5B) by virtue of being in keeping with a 1968 caravan licence, the key conditions of which were as follows:

"1. The licensed site shall be as shown edged in red on the plan attached to the licence.

4. The caravan standings shall be sited within the area shown as groups A-H on the plan attached to the licence.

6. Every caravan shall be not less than 20 feet from any other caravan in a separate occupation, and not less than 10 feet from a carriageway.

7. Each caravan and toilet block shall be no more than 150 feet from a road and shall be connected to a carriageway by a footpath with a hard surface, and the footpath shall be not less than 2'6" wide.

8. Each caravan must stand on a hard standing of concrete, tarmacadam, or other approved material which shall extend over the whole area occupied by the caravan and shall project not less than 3 feet outwards from the entrance to the caravan.

17. The licensed site shall be provided with suitable surfaced parking spaces for at least 20 cars."

The planning inspector concluded that whilst works to upgrade and improve the site were permissible under the 1966 permission and subsequent licence, the actual works carried out by the company went far beyond those envisaged.

Of particular importance was a condition enshrined in both the 1966 permission and the 1968 caravan licence, which dictated the permissible position of the caravan standings within the site. The planning inspector concluded that this condition had not been followed by the company in the post-2016 development.

In appealing the inspectors' determination against the initial enforcement notice challenge, the company forwarded five grounds of appeal. Of these, only grounds new and three are covered here, being the most pertinent grounds for appeal. In summary, these were:

- Ground One – Section 174(2)(c) of the TCPA enables an appeal to be brought against an enforcement notice on the ground that the matters stated in the notice do not constitute a breach of planning control (which, for the purposes of the TCPA, includes carrying out development without the required planning permission). Here, the appellant contended that the operational development enforced against under the EN was not in breach of planning control, since it was permitted development by virtue of article 3(1) of and the Part 5 Class B of schedule 2: 'Development required by the conditions of a site licence for the time being in force under the [Caravan Sites and Control of Development Act 1960]'.

- Ground Three – Section 174(2)(a) of the TCPA enables an appeal to be brought against an enforcement notice on the ground that planning permission ought to be granted in respect of the matters stated in the notice to constitute a breach of planning control. By virtue of section 177(5) of the TCPA, where an appeal is made on ground (a), an application for planning permission is deemed also to have been made in respect of those matters. The appellant contended that the inspector erred in law in failing to take into consideration the fallback position that a new caravan site licence would be granted in accordance with current national and local model standards and conditions, whose terms would require the construction of hard surfaced roadways, hardstandings and the installation of services and lights.

In dismissing ground one, and agreeing with the approach of the inspector, Timothy Mould QC, at paragraph 72, found as follows:

“72. In my view, the terms in which the permitted development right is expressed require the decision maker to determine not merely whether the development under consideration includes elements which are required by a condition of a caravan site licence read in isolation, but also whether the development is in accordance with the conditions of that site licence read as a whole. I cannot accept that the Class 5B permitted development right is to be read as authorising development on a caravan site which, although containing elements which accord with individual conditions of the site licence issued in respect of that site, nevertheless is contrary to the conditions of that site licence when read and applied as a whole. It is to be noted that the Class 5B permitted development right is granted in terms which require consideration of what is "required by the conditions of a site licence" (plural); rather than merely required by "a condition" of a site licence.”

In dismissing ground three, and agreeing with the approach of the inspector, Timothy Mould QC, at paragraphs 93, 101 and 102, found as follows:

“93. By virtue of section 3(3) of the [Caravan Sites and Control of Development Act 1960], a local authority may issue a caravan site licence if and only if at the time when that site licence is issued, the applicant is entitled to the benefit of planning permission for the use of the site as a caravan site. On the facts as they stood before the inspector, it was the 1952 planning permission and the 1966 permission which would provide the lawful basis for the Appellant to apply for and for [Amber Valley Borough Council] to issue a modern caravan site licence in respect of the site.”

“101. In my judgment, there is no proper basis for concluding that the inspector failed to understand or to take account of the fallback position asserted by the Appellant. On the contrary, her analysis to which I have referred shows that she both considered it and rejected it in favour of her own asserted baseline position. She did so because, in the light of her analysis of the scope of the 1966 permission on the basis of the available evidence, she reached the view that it was the layout of the caravan site as controlled by condition 2 of the 1966 permission, and not the layout that was the product of the operational development carried out since 2016, which was the realistic fallback position available to the Appellant, in the event that the ground (a) appeal failed. There was no need for her to say more than she did in order to explain why she reached that judgment.

102. The flaw in the Appellant's argument was not that it was unrealistic to expect the issue of a modern caravan site licence, as the Second Respondent's senior planning officer rightly acknowledged; the flaw was to assume that such a licence would result in the reinstatement of the operational development carried out at the site since 2016.

Given that use of the site as a lawful caravan site was primarily controlled by the 1966 permission, the only realistic fallback open to the Appellant in the event that ground (a) failed, was to reinstate the layout authorised by condition 2 of the 1966 permission."

Accordingly, the appeal was dismissed.

Case summary prepared by Charlie Austin