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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 25/02/19

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13.05.2019

## Appeal Decision

Site visit made on 25/02/19

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 13.05.2019

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**Appeal Ref: APP/T6850/X/18/3217896**

**Site address: Riverside Caravan Park, Llangammarch Wells, Powys, LD4 4BY**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- 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 Mr John Carroll against the decision of Powys County Council.
  - The application Ref: P/2018/0573, dated 23 May 2018, was refused by notice dated 10 October 2018.
  - 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 siting of 40 touring caravans and 13 static caravans between 1 February and 31 October inclusive in any one year and the winter storage of 42 caravans.
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### Decision

1. The appeal is dismissed.

### Application for an Award of Costs

2. An application for costs was made by Mr John Carroll against Powys County Council. This application is the subject of a separate Decision.

### Reasons

3. The appeal relates to an area of land currently known as Riverside Caravan Park in Llangammarch Wells, Powys. The site is a long-established caravan park which appears to have been originally granted planning permission in 1969 (hereinafter referred as the 1969 planning permission). That permission represented a conditional planning permission, with Condition No.6 stating that: "*Caravans shall be stationed on the site only for the period Maundy Thursday- 31 October in any year and all caravans and associated structures shall be removed during the winter season*".
4. Notwithstanding the terms of the 1969 planning permission, a Lawful Development Certificate (LDC) was issued by the Local Planning Authority (LPA) in November 2001 (hereinafter referred as the 2001 LDC)<sup>1</sup>. That LDC certified that the: "*Use of the land for a maximum of twelve static caravans sited permanently for holiday use during the period from Maundy Thursday to 31 October in each year and for the storage of a*

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<sup>1</sup> LPA Ref: B/01/0187

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*maximum of 42 touring caravans on land at Riverside Caravan Park, Llangammarch Wells*” was lawful. A further LDC was issued by the LPA in October 2014<sup>2</sup> (hereinafter referred as the 2014 LDC). That LDC certified that the “...*siting of 40 touring caravans and 13 static caravans between Maundy Thursday and 31 October each year and the winter storage of 42 caravans*” was lawful. I have been advised that the caravan park is currently operated in accordance with the terms of the 2014 LDC, although the appeal proposal seeks a new LDC for a proposal that would extend the seasonal occupation of the caravans. Specifically, the use for which a certificate of lawful use or development is sought is: “...*the siting of 40 touring caravans and 13 static caravans between 1 February and 31 October inclusive and the winter storage of 42 caravans*”.

5. The LPA objects to the issuing of the LDC, with the Officer’s Report setting out the use identified as lawful under the 2014 LDC. That same Officer’s Report then goes on to state that: “*In order to extend the season, an application to vary the above restriction would need to be required*” [my emphasis underlined]. In this respect, it would appear that the Council considers the seasonal occupation specified by the 2014 LDC to be a restriction to the development proposed in this case. Nevertheless, the same paragraph of the Officer’s Report goes on to state that: “*The implications of varying the condition would thereafter be considered by Officers in accordance with relevant planning policy*”. Whether the reference to ‘*the condition*’ in this sentence was intended to relate to the general restriction of the 2014 LDC or a more specific planning condition is unclear, although the associated Notice of Decision appears to suggest that it is the latter. Indeed, the Notice of Decision states that: “*The occupancy of the existing site in terms of seasons is restricted by condition. As such, an application to vary/amend the above will be required*”. The evidence submitted by the LPA in response to the appeal is consistent with the Council’s Notice of Decision. Indeed, it clarifies that it is actually Condition No.6 of the 1969 permission that the Council relied upon when refusing the current proposal.
6. Despite the obvious ambiguity surrounding the LPA’s case, there is little doubt in my mind that Condition No.6 of the 1969 permission is no longer enforceable, not least because its prolonged breach has been recognised by the issuing of the LDCs in 2001 and 2014. I concur with the appellant’s arguments to this limited extent. However, it is well-established in law that the principal issue in an appeal under Section 195 of the above Act is whether or not the LPA’s decision not to issue an LDC was well-founded and not whether the reasons that led to that decision were well-founded. Indeed, there would be no public interest in granting an LDC where the evidence suggests that the matter in question would not be lawful, even if the LPA’s reason for coming to that decision is found to be misplaced. Within this context, it is clearly necessary for the proposed use to be assessed relative to the lawful fall-back position, most notably in relation to whether or not the development would constitute a material change of use. As the appellant has clearly addressed this issue in his written submissions, I am satisfied that there is no prejudice in me considering such matters.
7. It is well-established in law that, for there to be a material change of use in such circumstances, there would need to be a definable change in the character of the use of the land. The appellant contends that the change from the position certified as lawful in the 2014 LDC to that proposed through the appeal proposal would not represent a material change of use. Specifically, it is submitted that the character of the land would be identical under the proposed seasonal operations to the existing situation, having particular regard to the fact that the storage of caravans on the site

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<sup>2</sup> Ref: P/1014/0799

during the winter months can be lawfully undertaken. However, whilst I do not dispute the fact that the terms of the 2014 LDC enable the appellant to lawfully store caravans during the winter months, for the reasons set out below, I consider that the proposed extension of the seasonal holiday use would result in a definable change to the character of the use of the land and that it would, therefore, represent a material change of use.

8. It is clearly notable that the development only seeks to increase the residential occupation of the caravan site by approximately two months relative to the current situation. It is also notable that no additional caravans would be added relative to that established through the 2014 LDC. However, an assessment of character goes beyond visual impact and, having had regard to the difference between the proposed residential occupation of the caravans and the lawful storage of such structures, I do not consider that the change to the overall character of the use, or indeed the land, would be insignificant or immaterial. In coming to this conclusion, I have been particularly mindful of the numbers of caravans involved and the impact that their occupation would have on the land and wider area. Specifically, the increased period of occupation would inevitably result in an increased level of human activity on and around the appeal site, including increased vehicular movements and levels of noise and general disturbances, whilst also resulting in wider amenity implications. Indeed, it is the combination of such factors that leads me to find that the extended period of occupation of the caravans would, as a matter of fact and degree, result in materially different planning circumstances that would, as a result, constitute a material change of use.
9. Based on the foregoing I find that, despite there being some ambiguity in respect of the LPA's reasons for refusing to issue the LDC, the overriding decision not to grant an LDC was well-founded. The appeal should therefore fail. I shall exercise the powers transferred to me under Section 195(3) of the 1990 Act, as amended, accordingly.

*Richard E. Jenkins*

INSPECTOR