Case Name: *Norfolk Caravan Park Ltd v Secretary of State for Housing, Communities And Local Government & Anor* [2021] EWHC 2114 (Admin) (28 July 2021)

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Commentary:
This was an application for a statutory review under s.288 of the Town and Country Planning Act 1990 of the Inspector's decision to dismiss the Claimant's appeal of their application for a lawful development certificate ('LDC') for residential use of the caravans in Merryhill Country Park ('the Site'). Broadland District Council had refused the LDC application on the basis that the current planning permission (the 2016 Permission, a variation of Condition 4 of the 2004 Permission) was subject to conditions which only allowed caravan use for holidays and prohibited residential use. The High Court dismissed the claim.

Four issues were in dispute, namely:

1. Whether the Inspector was entitled to conclude that the 2016 Permission (which contains an effective condition preventing the use of the site for static residential caravans) had been implemented and was capable of being enforced;
2. Whether the Inspector was entitled to conclude that the proposed residential use would not amount to use as a 'holiday caravan park' and so would fall outside the scope of the 2004 and 2016 Permissions;
3. Whether the Inspector was entitled to conclude that the proposed residential use would have amounted to a breach of Condition 4 of the 2004 Permission (i.e. 'The holiday accommodation shall not be occupied by any person for a period exceeding four consecutive weeks and such a person shall not return within 2 weeks of such period');
4. Whether the Inspector was entitled to conclude that the proposed residential use would amount to a material change of use from the predominantly holiday use which was in existence at the relevant date and whether he gave adequate reasons for his conclusions.

On the first issue, the Court found that Claimant's challenge amounted to a challenge to the Inspector's analysis of the evidence before him – rather than a challenge to the Inspector's analysis of the 2016 Permission. The Court held that the Inspector was entitled to accept the evidence and submissions from the Council that the 2016 Permission had been implemented and rejected all three of the Claimant's criticisms of his findings.

On Issue 2, relying on the principle established in I'm Your Man Ltd v Secretary of State for the Environment [1999] 77 P&CR 251, the Claimant submitted that the grant of the permission was for a 'caravan site' and that the use of the word 'holiday' cannot serve as a definition of the essential land use permitted. Instead, the Claimant argued that the word 'holiday' is a form of limitation of the essential land use permitted which cannot, absent a relevant effective condition, bring about a limitation of the permission. Rejecting this argument, Lang J held that the word 'holiday' clearly qualifies the term 'caravan park' in the

2004 Permission, and is as much a component of the use permitted by the 2004 Permission as the word 'caravan'. The Court held that as a matter of ordinary and objective language a holiday caravan park is 'conceptually and linguistically different to a caravan site simpliciter or a residential caravan park/site'. It followed that the Inspector was entitled to find that the permitted holiday use could not be widened to include the proposed residential use.

As for Issue 3, the Claimant accepted that the restrictions on periods of occupancy in Condition 4 applied to the caravans that were in use for holiday purposes. However, the Claimant submitted that Condition 4 did not apply to caravans in use for other purposes, namely residential use, because it only applied to 'the holiday accommodation'. Rejecting this argument, Lang J held that Condition 4's natural and ordinary meaning was that the accommodation on the Site which was used by holidaymakers was subject to occupancy restrictions. Such restrictions, on a reasonable reading, were so stringent as to be incompatible with residential use – a conclusion bolstered by the stated reason for the condition, that 'the site lies outside an area in which the Local Planning Authority permits residential development'. The Inspector was therefore entitled to find that the proposed residential use would have amounted to a breach of Condition 4 of the 2004 Permission.

On Issue 4, the Claimant submitted that the Inspector's findings and conclusions were fundamentally flawed on the basis that determination as to whether there has been a material change of use is not dependent on whether the use is or is not ordinarily permitted in a given area, but rather based upon actual consideration of the differing land-use effects of the two different activities. The Claimant submitted that the Inspector failed to undertake such an assessment and that the land-use effects of a caravan occupied by a person on holiday are not likely to be intrinsically different from those of a caravan occupied by a person as their residence. The Court held that the Inspector was entitled to conclude that as a matter of fact and degree, the proposed use would be a material change because of the potential effects of introducing permanent residential accommodation into an area where it would not normally be permitted. It was an exercise of judgment by the Inspector not disclosing any public law error. Further, the reasons given by the Inspector met the required standard.

Accordingly, the Claimant's claim was dismissed.

Case summary prepared by Stephanie Bruce-Smith