Neutral Citation Number: [2021] EWHC 1200 (Admin)

Case No: CO/2774/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff CF64 2UA

Date: 12/05/2021

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court
Between :

BARTON PARK ESTATES LIMITED	**Claimant**
- and -	
(1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
- and –	
(2) **DARTMOOR NATIONAL PARK AUTHORITY**	

Mr George Mackenzie (instructed by **Stephen Scown LLP**) for the **claimant**
Mr Andrew Parkinson (instructed by **Government Legal Department**) for the **first defendant**
Mr Timothy Leader (instructed by **County Solicitor, Devon County Council**) for the **second defendant**

Hearing dates: 27- 28 April 2021
- -

Approved Judgment

HH Judge Jarman QC:

1. There has been a caravan park at Bedford Bridge, in the Dartmoor National Park, for over 40 years. It is currently known as the Magpie Leisure Park (the site). In 1987, the second defendant's predecessor as the local planning authority (the authority), granted conditional planning permission for development of the site, the brief particulars of which on the grant of permission were stated to be "Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge." The conditions did not limit the number of units to those set out in the particulars, as they could have done. Accordingly the claimant as owner applied to the authority in 2018 for a certificate of lawful use or development for the stationing of up to 80 caravans on the site "for the purpose of human habitation" (the proposed use). The application was refused and the claimant appealed under section 195 of the Town and Country Planning Act 1990 (the 1990 Act). The appeal was determined after an inquiry by an inspector appointed by the first defendant (SofS) by dismissing the appeal.

2. The essential reasoning set out in the inspector's decision letter dated 29 June 2020 (the decision letter) was that the proposed stationing of up to 80 caravans for human habitation is not provided for by the 1987 permission, but would amount to a material change of use for which planning permission would be required. The claimant now appeals that dismissal to this court, with permission, under section 288 of the 1990 Act, and does so on three grounds as ultimately pursued.

3. The first ground is that the inspector misinterpreted the 1987 permission and should have decided that the lawful use thereunder was simply for a caravan site rather than such a site at which caravans provide both permanent residential accommodation and holiday accommodation. The second is that the inspector should have decided that it is within the scope of that permission for no caravans on site to be used for holidays. The third is that the proposed use would not change the definable character of the use of the park which would still be a caravan site, and so there would be no material change of use.

4. Each of these grounds is refuted by the SofS and the authority, who submit that the inspector identified the correct principles of law in respect of each of the grounds and applied them appropriately to the facts.

5. The inspector conducted a site visit to the park in February 2020 immediately after conducting a two day inquiry and hearing evidence from witnesses of the claimant and the authority. She set out the present use of site in paragraphs 51 to 54 of the decision letter. On the western side of the site there are nine caravans in unrestricted residential occupation which are well kept with delineated gardens, parking spaces, porches, fencing and decking. On the eastern end of the site there are five holiday chalets which are wooden buildings in a lodge style with pitched roofs and which are set well apart. To the north and to the front of woodland of the site there are situated static caravans which the evidence suggested were also being used as holiday accommodation. The central part of the site is predominantly laid to grass with some trees and areas of hardstanding with no obvious permanent delineation of pitches, which is used for touring caravans. The remaining part of the site to the south consists of two grassed areas either side of the entrance driveway which lie between the

adjoining highway, the A346, and a row of mature trees along the southern boundary of the central area used for touring caravans.

6. The 1987 permission was granted subject to five conditions, the first of which required the development to be begun within five years. This was followed by a condition requiring improvement to the access to the site, and then one requiring landscaping to the road frontage.

7. Condition (d) then provided as follows:

> "The new sceptic tank and soakaway system, hereby permitted, shall be installed to the satisfaction of the Local Planning Authority before any of the new chalets or the new residential caravans are brought into use."

8. The remaining two conditions set out temporal limitations in respect of the occupation or use of various units as follows:

> "(e) The chalets, static holiday caravans and pitches for touring units shall only be occupied between 15 March and 15 November in each year.
>
> (f) No touring unit shall remain on the site for more than 3 weeks in each year."

9. The reasons given for the last two conditions are then set out in the 1987 permission:

> "(e) To protect the character of this part of the Dartmoor National Park during the winter months.
>
> (f) To ensure that part of the site remains available for use by touring caravans."

10. At the heart of this appeal is the proper interpretation or construction of the 1987 permission. The relevant principles were not in dispute before me and accordingly may be summarised as follows.

    i) Such construction is a matter of law for the court: *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476 at paragraph 28.

    ii) As a general rule a planning permission must be construed within the four corners of the consent itself, including the conditions in it and the express reasons for those conditions, unless another document is incorporated by reference or it is necessary to resolve an ambiguity: *R v Ashford DC Exp. Shepway DC* [1999] PLCR 12 at paragraph 19.

    iii) The question is not what the parties intended but what a reasonable reader would understand was permitted by the local planning authority. In determining objectively what a reasonable reader would understand, it is relevant to consider the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the

purpose of the relevant words, and common sense: *Trump International Golf Club v Scottish Ministers* [2015] UKSC 74, per Lord Hodge at paragraph 34.

iv) Conditions should be interpreted benevolently and not narrowly or strictly and should be given a common sense meaning: *Carter Commercial Developments Ltd (In Administration) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1200 (Admin) at paragraph 49 and *Northampton BC v Secretary of State for the Home Department* [2005] EWHC 168 (Admin) at paragraph 22.

11. There are several difficulties with construing the 1987 permission. The first is that the development which is permitted is expressly that which is described in the application dated 7 July 1986 and the plans and drawings attached thereto numbered F/3.35/895/1986/5826/6. The brief particulars quoted above then immediately follow. None of the application, plans or drawings referred to were available to the inspector or in these proceedings. It is clear that the brief particulars were just that, and that other development was permitted, for example the new septic tank and soakaway referred to in condition (d).

12. The second is that the brief particulars refer to an enhancement scheme, but it not clear what precisely was being enhanced. The only previous permission made available before the inspector and in these proceedings was granted in 1981 for "Proposed amendment of existing provision at caravan site to allow for 8 residential units, 26 static holiday vans and 10 new pitches for touring caravans, Magpie Caravan Park, Bedford Bridge, Horrabridge." However, that in turn relates to amendment to the existing provision and there is no document showing what the existing provision was. Moreover, the inspector found that the 1981 permission was not implemented because there was no evidence to indicate that details of improvement to the access were approved in the implementation period as required by conditions to that permission.

13. Nevertheless, as the inspector observed in paragraph 13 of the decision letter, the reference to ten new pitches for touring caravans strongly suggests an increase in the pre-existing level of provision, for such caravans at least. The same may be said in relation to the chalets and residential caravans described by the word "new" in condition (d) of the 1987 permission. Accordingly, it appears that the enhanced scheme permitted by the 1987 permission was to a caravan site which already included pitches for touring caravans chalets and residential caravans.

14. The next difficulty is how the absence of conditions limiting the permitted development to the numbers of the various units set out in the brief particulars, or to any other numbers, affects the construction of the 1987 permission as a whole. This issue has been the subject of a good deal of judicial attention, and the main authorities were set out at some length by the inspector. It is not suggested that the principles were incorrectly set out, but rather that they were incorrectly applied. Nevertheless before me each of the parties dealt with the authorities in detail and there were some nuances between them as to how they should be applied. It is necessary, therefore, to deal with some of that detail.

15. The statutory framework is now set out in the 1990 Act, the predecessor of which was the act with the same title passed in 1971. For present purposes there is no material

difference between the relevant provisions in each act respectively and I shall refer only to those set out in the 1990 Act so far as material to these proceedings.

16. Part III of the 1990 Act deals with control over development, which is defined by section 55(1) as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." Section 57(1) provides that planning permission is required for the carrying out of any development of land. Permission is granted or refused by a local planning authority under section 70(1) either unconditionally or subject to such conditions as the authority thinks fit.

17. By section 72(1) conditions may be imposed on the grant of permission:

> "(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears expedient to the local planning authority for the purposes of or in connection with the development authorised by the permission;
>
> (b) for requiring the removal of any building or works authorised by that permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of the land at the end of that period."

18. Part VIII of the 1990 Act deals with enforcement. Section 171A(1) provides that for the purpose of the Act (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. Section 192(1) allows an application to the local planning authority by anyone wishing to ascertain whether any proposed use of buildings or other land would be lawful. Under subsection (2) the authority if satisfied that the use described in the application would be lawful if instituted or begun at the time of the application shall issue a certificate to that effect and in any other case shall refuse the application. By section 193(5) such a certificate shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission had been granted unless the matter is described in the certificate.

19. Section 195(1) allows an appeal to the SofS where such an application is refused. Section 288(1)(b)(i) allows an application to the High Court by any person aggrieved by an action on the part of the SofS, which includes a decision by an inspector appointed to hear an appeal under section 195(1), on the grounds that the action is not within the powers of the 1990 Act.

20. It is now well established that a section 288 application may be made on judicial review grounds. However, in considering such grounds, inspectors' decisions must be construed in a reasonably flexible way and need only refer to the main issues in dispute. It is not appropriate on hearing an application under section 288 to carry out a review of the planning merits of the decision. In *St Modwen Developments Ltd* v *Secretary of State for Communities and Local Government* [2017] EWCA 1643,

Lindblom LJ reiterated these principles at paragraph 6 and the following warning at paragraph 7:

> "More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63."

21. The relationship between limitations to and condition of planning permissions, and the phrase "conditions or limitations" in the enforcement provisions of the 1990 Act, has been considered by the courts on several occasions. In *I'm Your Man Ltd v Secretary of State for the Environment* (1998) 4 PLR 107, Mr Robin Purchas QC sitting as a judge of the High Court considered a planning permission for a certain use "for a temporary period of seven years." No condition was imposed under section 72(1)(b) requiring discontinuance of the use at the end of that period. The judge, in rejecting the argument that the wording of the permission imposed a time limitation, said at page 115:

> "Planning control, including the grant of planning permission and enforcement, is a creature of statute. The powers of planning authorities and the Secretary of State on appeal are limited to those granted by statute, including those by necessary implication. The 1990 Act does not expressly provide a power for the imposition of limitations on the grant of planning permission pursuant to an application. The argument for necessary implication of that power relies upon the reference to breach of condition or limitation in the context of the enforcement-related provisions… In my judgment, the references in the enforcement-related provisions to breach of limitation as well as condition are equally consistent with a reference to limitations expressly authorised as part of the power to grant permission by a development order. That does not, to my mind, necessarily imply that the planning authority or the Secretary of State have a statutory power to impose limitations on permissions granted on an application that would be amenable to enforcement under the Act"

22. That case concerned a temporal limitation, but the principle is one of general application. In *R (on the application of Altunkaynak) v Northamptonshire*

Magistrates Court [2012] EWHC 174 (Admin), Richards LJ after referring to *I'm Your Man Ltd* said at paragraph 39:

> "True it is that the case was concerned with an apparent temporal limitation on the permission granted, whereas in this case the words "as an extension to the present premises at number 15" are relied on as imposing a substantive limitation on the permission granted. But the reasoning in I'm Your Man Limited contains nothing to justify confining its application to temporal limitations. The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition."

23. In *Cotswold Grange County Park v Secretary of State for Communities and Local Government* [2014] JPL 981, Hickinbottom J, as he then was, considered similar facts to the present case, in that the planning permission there was for "54 caravans" but with no condition limiting the use of the park to that number of caravans. At paragraph 15, the judge said:

> " …the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control"

24. At paragraph 30, he concluded:

> "Therefore, whilst I accept that the Inspector acknowledged the principle derived from I'm Your Man, I have come to the firm conclusion that he failed properly to apply it. He failed to respect the difference between a limitation of numbers of caravans in the description in the grant (present in this case), and a limitation of such numbers in the form of a condition (not present in this case). In that failure, unfortunately, the Inspector (and the Council before him) materially erred in law, because only the latter was capable of imposing a limitation at law."

25. In *Winchester City Council* v *Secretary of State for Communities and Local Government* [2015] EWCA Civ 563, the Court of Appeal again considered the principle. Sullivan LJ said at paragraph 19:

> "The planning permission in the present case was for a change of use of agricultural land to travelling showpeoples' site. It permitted that change of use and no other. It did not permit a

> change of use to a use for the stationing of caravans for residential purposes by persons who were not travelling showpeople. Since there was no occupancy condition use of the site by occupiers who were not travelling showpeople was not prohibited. Whether the site was being used by non-travelling showpeople and, if so, whether that use was a material change of use from an initial use by travelling showpeople, were matters of fact and degree, which the Inspector should have determined, but did not, because he misunderstood the effect of the decision in I'm Your Man."

26. Sullivan LJ then went on in paragraphs 21 and 22 to refer to the decision appealed in that case of Mr Philip Mott QC sitting as a High Court judge and to the decision of Hickinbottom J in *Cotswold Grange*:

> "The I'm Your Man line of authorities has, in my judgment, been misunderstood by the appellants, and it was misapplied by the Inspector in paragraph 26 of his decision. It was not relevant, in the circumstances of the present case, when the allegation in the enforcement notice was that there had been a material change of use from use as a travelling showpeoples' site to use as a caravan site for persons who were not travelling showpersons. As Mr Mott said at paragraph 45 of his jusdgment, the unifying feature of the I'm Your Man line of authorities is that the use remained the same…In Cotswold Grange the use of the site for the stationing of caravans remained the same. There was simply an increase in the number of caravans - a further six caravans in addition to 54 existing caravans. While the planning permission permitted the stationing of 54 and not 60 caravans, there was no material change of use from the permitted 54 caravans."
>
> The position was accurately summarised by Hickinbottom J in paragraph 15 of his judgment in Cotswold Grange Country Park:"

27. At paragraph 26, he concluded thus:

> "It is possible that the use of the word "limitation" in the judgments has contributed to the misunderstanding of the effect of the I'm Your Man line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use."

28. After dealing with this line of authorities and decisions of her colleagues in other appeals, the inspector at paragraph 46 said this:

> "Bringing all of this together, I am not persuaded by the Appellant's argument that in the absence of conditions limiting the number or type of occupation of caravans permitted on the appeal site, the existing grant of planning permission allows for any number of caravans for residential purposes. Keeping the proposition that *the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself* clearly in sight, the development permitted by the 1987 Permission is: "Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge." That is the existing lawful use of the appeal site. This description does not, for the reasons discussed above, serve to limit the number or type of caravan that may be stationed on the site, but that does not mean it can simply be disregarded."

29. The regard which the inspector paid to that description is revealed in the next paragraph of the decision letter:

> "In my judgment, the words in the 1987 Permission permit a caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition. The proposed use for "the stationing of up to eighty caravans for the purposes of human habitation" would be a change from this permitted use, in that it would encompass the use of any and all caravans on the site to provide permanent residential accommodation."

30. Accordingly the inspector had regard to the description in the 1987 permission, not as imposing a limit on the number or type of caravans which may be stationed on the site, but to interpret that permission as permitting permanent residential accommodation and holiday accommodation. The description only uses the word "holiday" in relation to the chalets, but condition (e) also refers to the static caravans as "holiday" and prevents occupation of them, the chalets or the pitches for touring units in the winter months. Condition (f) prevents the latter from remaining on site for more than three weeks each year.

31. Mr Mackenzie, for the claimant, submits that such an interpretation is not justified. The inspector referred to the site as already in use by 1981 as "a caravan site" in paragraph 7 of the decision letter and accepts in paragraph 50 that it would "remain a caravan site" even after implementation of the proposed use.

32. He refers to the interpretation provision of the 1990 Act, section 326(1) of which defines "caravan site" as having the meaning set out in section 1(4) of the Caravan Sites and Control of Development Act 1960 (the 1960 Act). That in turn provides that

the phrase 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." Section 29(1) of the 1960 Act defines "caravan," so far as material, as "any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted…"

33. Moreover, where terms or words are defined in a statute, they bear the same meaning, in the absence of any indication to the contrary, in any proposals or authorisations made pursuant to that statute (see *Wyre Forest District Council v Secretary of State for the Environment* [1990] 2AC 357, where the House of Lords held that the word "caravan" in a planning permission had the same meaning as in section 29(1) of the 1960 Act so as to include a chalet).

34. Accordingly, Mr Mackenzie submits that the 1987 permission should be interpreted as permission simply for a caravan site. There is no condition attached requiring mixed permanent residential and holiday occupation of the caravans. Alternatively, if the 1987 permission should be read as including such a requirement, it should further be interpreted that the holiday occupation applies only to the chalets permitted and the caravans permitted can provide either permanent residential accommodation, or holiday accommodation, or both. The description includes the phrase "holiday chalets" but does not use the word "holiday" to describe the use of any of the types of permitted caravan. It refers to "residential vans" but does not specify what type of van is referred to, so any type of structure as set out in section 29(1) of the 1960 Act must be included. Moreover there was no condition limiting the number of such vans.

35. Mr Mackenzie submits that on a proper interpretation of the 1987 permission, it would be permissible (although not required) for the site operator to use the caravans only for permanent residential accommodation.

36. Mr Parkinson for the SofS and Mr Leader for the authority submit that that argument ignores the fact that the description in the 1987 permissions sets out the type of use of the different structures permitted on site, and also ignores conditions (e) and (f) and the reasons given for them. When all these factors are taken into account, the inspector was correct to interpret the 1987 permission in the way she did in paragraph 47 of the decision letter.

37. I have come to the conclusion that that interpretation of the inspector is correct. Applying the principles of interpretation set out in paragraph 10 above, and the observation of Hickinbottom J in paragraph 15 of *Cotswold Grange* as approved by the Court of Appeal in *Winchester*, it is clear that there is no numerical limitation on the various types of unit set out in the description of the 1987 permission. Had the matter stopped there, then Mr Mackenzie's submissions may have had some force.

38. However, regard must be had to the whole of the 1987 permission. In particular, condition (e) provides that the chalets, static holiday caravans and pitches for touring units shall not be occupied in the winter months, and the reason given is to protect the character of this part of the Dartmoor National Park during those months. In my judgment, such a limitation is inconsistent with permanent residential occupation caravans on most of the site. Moreover, condition (f) provides that no touring unit shall remain on site for more than 3 weeks in each year, for the stated reason that part

of the site remains available for use by touring caravans. These conditions, to use the words of Hickinbottom J, identify what cannot be done- what is forbidden.

39. Accordingly in my judgment, the inspector was correct in paragraph 47 of the decision letter to interpret the 1987 permission as permitting a caravan site providing both permanent residential accommodation, and holiday accommodation, the latter in the sense that year round use is prevented by condition. Ground 1 fails.

40. Ground 2 is that inspector was mistaken in concluding that the proposed use would fall outside the scope of the 1987 permission, and should have decided that it permits use of the site where no caravans are to be used for holiday purposes. It was common ground before me, as it was before the inspector, that if the proposed use is within the scope of that permitted by the 1987 permission it would be lawful even if it amounted to a material change of use.

41. Mr Mackenzie submits that there are three reasons for advancing this ground. First, there is nothing in the 1987 permission which requires as opposed to permits a holiday use of any of the caravans on site. Accordingly all caravans currently on site could lawfully be used for permanent residential accommodation. Second, the inspector was mistaken to read the phrase "for the purposes of human habitation" in the proposed use as referring just to residential use. That phrase refers to a spectrum of uses which includes residential use and holiday use (per Lang J in *Breckland District Council* v *Secretary of State for Housing, Communities and Local Government* [2020] EWHC 292 (Admin)). Third, in paragraph 47 of the decision letter the inspector assumes that the stationing of 80 caravans for permanent residential accommodation would terminate holiday accommodation.

42. Against this, Mr Parkinson and Mr Leader submit that in paragraphs 46 and 47 of the decision letter in the inspector compared the use permitted under the 1987 permission with the proposed use, which was the correct comparison when considering whether the proposed use comes within the scope of the 1987 permission. The phrase "for the purpose of human habitation" in the proposed use would include the use of all the caravans for permanent residential occupation which the inspector had to consider as permitted under the proposed use.

43. Mr Parkinson emphasises the word "encompass" in paragraph 47 of the decision letter. He accepts that there may be a number of scenarios under the proposed use, some of which may be within the scope of the 1987 permission. However, he maintains the scenario which was focussed upon before the inspector was the possibility that all 80 caravans referred to in the proposed use could be used for permanent residential accommodation. Even within that scenario, the inspector did not proceed on the basis that the proposed use would mean no use of the site for holiday accommodation.

44. Mr Leader relies upon a decision of the Divisional Court in *Wipperman & Buckingham v Barking LBC* [1966] 17 P&CR 225 where it was held that the cessation of one of the uses in a mixed use of land does not amount to development unless one use is allowed to absorb the whole site to the exclusion of the other. It is then a matter of fact and degree whether there has been a material change of use. He submits that whilst the mere cessation of the holiday accommodation on site might not amount to

development, its absorption by a residential use would be outside the terms of the 1987 permission.

45. In so far as there is any overlap between grounds 1 and 2, then my reasoning, set out above in respect of the former, applies. As to the remainder of the arguments under ground 2, construing the decision letter in a reasonably flexible way and without excessive legalism, it is clear that the inspector did focus on one of the scenarios of the proposed use where all 80 caravans referred to therein would be used as permanent residential accommodation. However, it is also clear from paragraph 47 of the decision letter that she understood that the proposed use would "encompass the use of any and all of the caravans" to provide such accommodation. In other words she understood that the proposed use could include such a scenario but could include other scenarios. She also understood that even in this extreme scenario, holiday accommodation, limited by condition (e) to occupation other than in the winter months, could continue. In paragraph 60 of the decision letter she observed that the proposal for stationing of up to 80 caravans on site could only be in addition to the existing chalets and not in place of them.

46. Accordingly, I am not satisfied that the inspector's reasoning in this regard displays the errors suggested by Mr Mackenzie and ground 2 also fails.

47. That leaves ground 3. This alleges that the inspector erred in deciding that the proposed use would amount to a material change of use, despite also deciding that the planning unit would remain a caravan site. At paragraph 50 of the decision letter, the inspector said this:

> "As the Appellants rightly points out, the proposed use would not be of a difference type to the existing lawful use, in that the planning unit would remain a caravan site. The intensification of an existing use can, but will not necessarily amount to a material change of use: what is at issue is whether the extent and nature of the change amounts to a change in the *character* of the existing use. It is important to be clear that what is to be compared, in deciding whether there would be any material change of use, is the present use (rather than any national use which may theoretically be possible without the need for a further grant of planning permission) and the proposed use."

48. In the following paragraphs the inspector then assessed the distinct elements which contribute to the existing character of the site, as outlined in paragraph 5 of this judgment. At paragraph 56, she concluded that the western part of the site, where the permanent residential caravans currently stand, would experience little change if the site as a whole were to be used for up to 80 caravans for that same purpose.

49. At paragraph 57 she observed that the character and appearance of the central area varies with the seasons. The effect of the proposed use on this part of the site, and to some extent to the east where the chalets are situated, was summarised in paragraph 59 as follows:

> "Areas of the site which are currently devoid of light and other human activity during the winter months would acquire a year-

> round domestic presence. The open, grassed area in the centre would undergo a fundamental change, becoming similar in appearance to the western part of the planning unit, with substantial caravans set within private and well-delineated amenity space; permanent access roads and parking areas to serve each of them; ornamental planting; security lighting and other domestic paraphernalia."

50. At paragraph 62 she observed that there would no longer be large number of touring caravans arriving and leaving, but instead the majority of movements would occur in the rush hours, and by way of deliveries or socials calls. At paragraph 63 she said that the most notable visual change would be the stationing of caravans on the open grassed areas at either side of the site entrance which would be clearly visible from the road, whereas currently the caravan site is largely secluded from public view and well-integrated within the landscape. This would have the effect of visually extending the caravan site and domesticating the existing areas of open grass, at the expense of the rural character of this part of the countryside. She concluded at paragraph 66 therefore that the proposed use would amount to a material change of use of the site, for which planning permission would be required.

51. It was common ground before me that the test for deciding whether a material change of use has occurred is whether there has been a change in the character of the use, or as Mr Mackenzie put it, in the definable character of the use. That latter phrase, used by Ouseley J, was approved by the Court of Appeal in *Hertfordshire County Council* v *Secretary of State for Communities and Local Government & Anor* [2012] EWCA Civ 1473. The case concerned whether a larger scale use of a scrap yarded amounted to a material change of use. The Court of Appeal agreed with Ouseley J that it did not.

52. At paragraph 25, Pill LJ, giving the lead judgment, dealt with the issue of which changes in their effects are capable of creating a material change of use. It was not in dispute that it is permissible to consider off-site effects. Pill LJ said this:

> "In assessing whether there is a change of character in the use, its impact of the use on other premises is a factor. It is necessary, on the particular facts, to consider both what is happening on the land and its impact off the land when deciding whether the character of the use has changed."

53. Mr Mackenzie submits that the recognition by the inspector at paragraph 50 of the decision letter that the proposed use would not be of a different type to the existing lawful use, in that the site would remain a caravan site, is the beginning and end of this ground of challenge. The error that she made in that paragraph is to treat the type of use as different to the character of the use of the site when conceptually they are the same thing. He submits that the situation described by the inspector is on all fours with that in *Hertfordshire*. The proposed use would encompass use as a caravan site "on a larger scale" but its definable character of the use would remain that of a caravan site. This is to be contrasted with that in *Cotswold Grange* and *Winchester* where there was a change in the definable character of the use.

54. Mr Parkinson and Mr Leader submit that it was open to the inspector to find that the proposed use would involve a material change in the character of the use even though

the existing use and the proposed use could in general terms be described as a caravan site. That is a matter of judgment, and the factors which the inspector took into account in paragraphs 50 to 63 provide a justifiable basis for her conclusion.

55. In my judgment, the inspector applied the correct test in this regard. Although she had regard to off-site effects, this was very much in the context of deciding whether the proposed use would bring about a change in the character, or definable character, of the use on site. The proposed use would not simply amount to a caravan site "on a larger scale" as in *Hertfordshire* or "simply an increase in the number of caravans" as in *Cotswold Grange*. The inspector was entitled to conclude, as she did for the reasons set out in paragraphs 57 to 63 of the decision letter, that the proposed use would bring about a material change in the definable character of the use on site. Ground 3 also fails.

56. In conclusion, the application is dismissed. I am grateful to each counsel for his thorough and focussed submissions. Each helpfully agreed that any consequential matters not agreed can be dealt with on the basis of written submissions. I invite the parties to submit a draft order, agreed as far as possible, and any such submissions within 14 days of handing down this judgment.