

PLANNING

Caravans deemed lawful at hotel site

Bernadette Hillman

I am often asked whether a potential site would be a good proposition for a new business, or for a business which, even in these uncertain times, is thriving and expanding. Of course, this depends on the authorised use of that site and the established use, particularly where there are several buildings scattered over the site with various uses (or stages of abandonment). Generally, the advice to clients will be based on fundamental principles, namely to look at the planning history of the site and what is on it now. Look also at the planning unit and the proposed use to see whether what you intend would constitute development requiring planning permission. Are there permitted development rights or have these been removed? Is there a possibility of making an application for a CLEUD?

Once you have given the site an initial overview, there will, of course, be more questions when dealing with the specifics of the site and a client's specific needs. If there are buildings on the site, do these buildings have a visual impact on amenity? Of course, this may well be a different question from the current use of the site and of the buildings on it? How large are the buildings and how permanent are they? One of my clients runs a retail business from premises which he has now outgrown and is looking to relocate to what is ostensibly a garden centre with retail use, with several other buildings on the site for storage. Whether this site would suit her purposes may well be influenced by a recently reported case, which suggests that buildings on a site can be deemed permissible for use without a separate permission.

The case relates to the siting of four caravans in a walled garden in the extensive grounds of a North Yorkshire hotel. The garden was used by the hotel guests and the caravans were intended for the use and occupation of the hotel guests as well. The Inspector took the view that the caravans in the garden formed part of the same planning unit, ancillary to the main use of the premises as a hotel. They were effectively treated as being merely chattels placed on the land and, consequently, there was no material change of use. Is this the correct approach or should the siting of these guest caravans constitute a material change of use and/or operational development for which planning permission is required? What is more, based on this approach, would the Inspector's decision have been the same if the buildings were not caravans but portacabins used for storage for the hotel, as opposed to extra bedrooms?

These questions were aired in the case of *Restormel BC v Secretary of State for the Environment and Raby (1982)* which involved the Norbury Sands Hotel in Newquay. As in the recent case, caravans had been parked in the hotel grounds for use as bedrooms for waitresses during the holiday season. This was found by the Inspector to be ancillary to the main use of the premises as a hotel and thus to escape the need for planning permission. The Queens Bench division disagreed. They took the view that as a matter of law, the mere stationing of a caravan on land can amount to a material change of use of that land, irrespective of any use to which the caravan itself is put because caravans and other similar temporary buildings will have a visual impact on amenity,

which makes it a planning issue. Indeed, this was many people's understanding of the law until the North Yorkshire Hotel case.

There are two conventional arguments that may be used to counter an allegation that a material change of use or building operations have occurred. The first argument is that what is proposed or has taken place is *de minimis*. The second argument is that what is proposed or has occurred is not a building operation in terms of the three tests: size, permanence and physical attachment. It would be difficult to argue that any test would seem to have been applied to the hotel case. The stationing of four caravans cannot reasonably be said to be *de minimis*. There is no suggestion either that they were small or intended to be temporary.

If the Inspector's reasoning in this case is correct, this can have implications for numerous other development sites, not just hotels, possibly opening up a whole can of worms. My client, who wants to run her business from the garden centre, may well be able to use the various outbuildings on the site for various different but arguably ancillary purposes without opposition. Typically this case could impact on the industrial user, such as the builder's and contractor's yard with portacabins on the site, with the result that these yards could store plant and other goods on the site, so long as it is within the same planning unit, and it can be argued that these are ancillary uses, without needing planning permission. Could this also apply, for example, to racking, used to store scaffolding whilst not out on hire, or would this still be deemed operational development requiring planning permission?

Where structures are portable, it would still be essential to show that they are used for purposes that are part of the lawful use of the land. This is illustrated by two cases from Essex where

enforcement notices, requiring the removal of a double-decker bus and metal storage containers on a building contractor's site, were quashed. In both cases the Inspector concluded that there had been no breach of planning control. The double-decker bus was used to transport a racing car sponsored for advertising purposes and also to accommodate employees at distant contract sites. It had been converted to provide basic living accommodation and, therefore, its storage on the appeal site was ancillary to the primary use of the land. The appeal succeeded under ground "c". With regard to the storage of containers, they were stored temporarily on site between construction projects and represented items of builders' plant. They were also ancillary to the lawful use of the site and the ground "c" appeal relating to that notice also succeeded.

We anticipate that the North Yorkshire Hotel case will need to be reviewed further before a final and definitive view can be reached but, in the meantime, this case is encouraging news for any potential developer.

This article is provided as a general informational service and it should not be considered as imparting legal advice on any specific matter. Copyright 2009. Debenhams Ottaway. All rights reserved.

Bernadette Hillman is a Partner & Head of Planning at Debenhams Ottaway, solicitors in St Albans.

For further advice and information, please contact Bernadette Hillman on 01727 837161 or via email on bh@dolegal.co.uk