

Appeal Decisions

1. PURPOSE AND RECOMMENDATIONS

Purpose of Report:	To inform Members of notified appeals and appeal decisions and to take them into account as a material consideration in the Planning Committee's future decisions.
Recommendations:	It is RECOMMENDED that: (This report is for Information)
Wards:	Council-wide

3.0 APPEAL DECISIONS

3.1 Appeal Reference: APP/D1265/W/20/3259205

Planning Reference: 3/19/1507/LB

Proposal: Replacement front doors (Retrospective)

Address: Tivoli Theatre, 19-27 West Borough, Wimborne Minster, Wimborne, BH21 1LT

Appeal: Allowed

- 3.1.2 The retrospective application for replacement front doors on the Grade II listed building was refused consent under delegated powers. Inner doors, on which the outer doors were modelled had traditional art deco brass handles and fittings whilst the new doors had stainless steel detailing and no door handles but simply rectangular push detailing. The colour of the doors was considered by officers to detract from the historic character of the Tivoli, resulting in harm to the significance of the heritage asset. Although less than substantial, this harm was not considered to be justified by any public benefit.
- 3.1.3 Referring to the list description, the Planning Inspector noted that the special interest and significance of the listed building lay principally in the formal design and fabric of the original eighteenth century structure which was a high status dwelling. The list description did not refer to the former cinema built during the 1930s and although old list descriptions may be incomplete, in this case he considered that the listing demonstrated that the writer sought to attach little importance to the cinema and fabric related to it.
- 3.1.4 Subsequently the former cinema has reopened as a theatre and works have been undertaken to provide the ground floor street frontage with an Art Deco identity including installation of the doors which were the focus of the appeal. The Inspector recognised that this aspect of the building's use and history made an important contribution to the social significance of the building locally

as it was the visual context within which the original parts of the frontage are now perceived.

- 3.1.5 The Inspector judged, contrary to the Council's concerns, that the silver colour of the fixings and door furniture made no difference to the way in which the original parts of the façade were perceived. In his opinion the colour was not incongruous and as the historic identity of the original building was barely perceptible within the lobby and foyer spaces, the door design did not affect its appreciation. He similarly identified no harm to the Conservation Area.
- 3.1.6 Concluding that the proposal would preserve the listed buildings and Conservation Area, the Inspector allowed the appeal.

3.2 Appeal Reference: APP/D1265/W/20/3255379

Planning Reference: 3/19/2264/FUL

Proposal: Demolish existing dwellings and erect a three and four storey block of 27no retirement flats, with residents lounge, amenity space, secure cycle storage, refuse store and car parking

Address: 442 & 444-454 Ringwood Road, Ferndown, Dorset, BH22 9AY

Appeal: Dismissed

- 3.2.1 The application to demolish the existing dwellings and erect a 3-4 storey apartment block was refused consent under delegated powers. The reasons for refusal were based on the impact of the proposed height, bulk and design on the character of the area and neighbouring amenity; the impact on protected trees due to the proximity of the proposed development; and the impact on future occupiers as a result of living conditions giving the proximity to protected trees.
- 3.2.2 Character and appearance – the inspector noted the appeal scheme is predominantly characterised by its assertive, contemporary design which, in itself, was not objected to by the Council by reason of the variety of styles found in the area. However, the inspector agreed with the Council and noted the development as proposed would accentuate its excessive scale and incongruity, whilst failing to reflect the local distinctiveness which characterises the New Road SCA.
- 3.2.3 Neighbouring amenity – the inspector agreed with the Council and noted by reason of its overall scale, bulk, mass and proximity to no 10 Pringles Drive, the proposed building would unacceptably harm the living conditions of these neighbouring residents, having particular regard to outlook and privacy
- 3.2.4 Protected trees - the inspector noted that the appeal proposal would subject the protected trees to additional pressure for pruning works or even felling, in order to bring more light into the flats and the amenity areas. The inspector also agreed with the Council in respect of conflict with the proposed drainage strategy and root protection areas (RPA). It is considered the loss of trees would erode the important contribution which they collectively make to the

character and appearance of the locality and have a detrimental effect upon the sylvan character of this area.

3.2.5 Living conditions of future occupiers – The inspector agreed with the Council that the orientation of units to the north, together with the fact that the proposed block would be sited within proximity to a number of mature trees, would be such that the living environment for future occupiers of the development would be dark and gloomy, and it is therefore likely that residents would have to rely on artificial lighting for large parts of the day, particularly during the winter months.

3.2.6 The inspector concluded he was in agreement with all the Council's reasons for refusal and dismissed the appeal.

3.3 **Appeal Reference:** APP/D1265/X/20/3256918

Planning Reference: 3/20/0388/CLP,

Proposal: the use of land for the stationing of static caravans for the purposes of human habitation.

Address: St Annes Cottage, Horton Road, Three Legged Cross BH21 6SD

Appeal: Dismissed

3.3.1 The Inspector considered the main considerations to be:

- whether the proposed use of the land for the stationing of static caravans for the purposes of human habitation would fall within the existing lawful use or be in breach of any existing condition.
- whether the proposed use would be a material change of use from the existing lawful use. If a material change of use would occur, this would amount to development requiring planning permission. If it would not, the certificate could be granted.

3.3.2 History

3.3.3 In order to establish the existing lawful use of the site the Inspector had regard to the existing planning permission, including any conditions attached to it, and an existing certificate of lawful development.

Planning permission granted in 1980 to 'site for touring caravans' was subject to 7 conditions. Condition 4 reads:

*No camping units on the site shall be used as permanent residential units.
Reason: To ensure that the site is used as a touring caravan/camping site.*

3.3.4 A Lawful Development Certificate (LDC) granted in 2016 confirmed the use of the site:

- a touring caravan site of no more than 50 caravans at any one time between 1 April – 30th September
- use of land for the siting of not more than 22 non-occupied touring caravans at any one time between 1 October- 31 March

- use for the siting/residential occupation of a mobile home associated with day to day operation of the site as a touring caravan park.

3.3.5 A subsequent LDC for “Use of land for the stationing of caravans for human habitation (a caravan site)” was refused and subsequently dismissed on appeal. Reference is made to that earlier appeal decision in the inspector’s decision letter.

3.3.6 Interpretation of the Permission

3.3.7 The site benefits from a planning permission granted in 1980 for a “site for touring caravans”. Conditions attached to the Permission frequently refer to touring caravans. *‘Whilst there is no limitation in the description of the development as to how the caravans are to be used, planning permission was granted as a site for touring caravans only. Nevertheless, the conditions limit the use of the site as a touring caravan/camping site between 1 April and 30 September and that no unit shall remain on the site for more than 14 consecutive nights.’*

‘...Given the above, the natural and ordinary meaning of the wording of the Permission, read in conjunction with the conditions attached to it, can only reasonably mean that planning permission was granted for a caravan site for touring caravans for holiday use and that the Council was approving what had been applied for.’

3.3.8 The Inspector considered the appellants arguments that the descriptive term ‘Touring caravans’ was not enforceable. He also took account of caselaw before concluding that *‘the siting of static caravans for human habitation would fall outside the definitional scope of what was granted planning permission’*.

3.3.9 Turning to the conditions attached to the Permission, condition 4 of the Permission refers to “camping units”. A previous Inspector found that this included touring caravans as it would be an absurdity to interpret it as only preventing the use of tents as permanent residential units. *‘He also found that as this condition relates to touring caravans, as opposed to any type of caravan, the unfettered human habitation of mobile homes would not be in breach of it. Looking at the natural and ordinary meaning of the wording of this condition, I concur with this conclusion’*.

3.3.10 The terms of the Certificate also only refer to touring caravans, with the exception of the siting of a mobile home for residential occupation. However, this is clearly a single mobile home and is to be occupied in association with the day to day operation of the touring caravan park.

‘Given the above, the proposed stationing of static caravans for the purposes of human habitation would not be in breach of a condition attached to the Permission or any limitations of the Certificate.’

In my judgment, the Permission and the Certificate permit the use of the appeal site for touring caravans for holiday use between 1 April to 30 September. That is the existing lawful use of the appeal site. I have established that the proposed

development would fall outside the scope of the Permission but would not be in breach of any conditions attached to it or the terms of the Certificate.'

3.3.11 *Whether there would be a material change of use for the stationing of static caravans for human habitation*

3.3.12 The Inspector considered the appellants'/Council's submissions which included caselaw.

3.3.13 The terms of the LDC restrict the number of caravans to no more than 50 at any one time. The Inspector considered that although static caravans are typically larger than touring caravans, touring caravans frequently have awnings and other domestic paraphernalia similar to those used for permanent residential use. *'In terms of their positioning, there is nothing to satisfy me that the static caravans would not be arranged in a similar pattern as the existing touring caravans are'*.

3.3.14 *In terms of traffic generation, the inspector considered an increase to be likely; However, I do not consider that such movements would increase to such an extent that it would, in isolation, result in a material change in the use of the site'*.

3.3.15 The Inspector acknowledged that cat ownership was likely amongst residents, which would likely have a negative impact on protected species in the vicinity but he concluded that any increase in the number of cats within the locality would not amount to a material change in the use of the site.

'The LDC restricts use of the site as a touring caravan site to between the 1 April and 30 September. Whilst non-occupied caravans can be sited on the land between 1 October and 31 March, this is limited to only 22 caravans at a time'.

3.3.16 Determining whether a material change of use has occurred the Inspector states:

'During this period of non-occupation, between 1 October and 31 March, the nature of the site no doubt changes significantly as there would be far fewer traffic movements in and around the site and far fewer people going about their daily activities, indeed this would likely be limited to staff and possibly the occasional visit from caravan owners to check on their caravans. Furthermore, there would be a reduction in the number of touring caravans on the site, awnings would likely be taken down and general domestic paraphernalia stored away. Therefore, the overall effect on the visual amenities of the site and the surrounding area would be significantly reduced compared to the other times of the year.

The proposed use would result in the typical activities and comings/goings of site residents that I have identified above continuing throughout the year. For example, residents traveling to and from work, carrying out school drops offs/pickups as well as parcel and grocery deliveries being made. In addition, general residential activities would continue to take place on the site, such as the domestication of the caravans and their plots, including the placement of outdoor furniture, planting, erection of boundaries, storage sheds and washing lines. Furthermore, there would be lights (internal and external) and noise

generated by site residents and the movement of vehicles. This would all be in marked contrast to the existing character of the site between the period of 1 October and 31 March, which is largely devoid of such activity during these months.

Overall, this would result in the character of the site fundamentally changing from that of a typical seasonal, tourist accommodation site to a year-round, permanent residential site. Therefore, whilst there would not be a material change in the use of the site when compared to the existing use taking place between 1 April and 30 September, as a matter of fact and degree, there would be when compared with the use of the site between the period of 1 October and 31 March.'

In the case before me, the static caravans would be used differently to how the existing touring caravans are used. Furthermore, they would be in use all year-round, as opposed to the six-month period the existing caravans are currently occupied for. Therefore, the resultant material change of use I have found would be development requiring planning permission'.

The appellant contends that it is not necessary to consider whether there would be a material change of use as the proposal falls squarely within what is permitted by the planning permission. Based on the evidence before me, I am not satisfied that there would not be a material change of use that would require planning permission'.

3.3.17 Conclusion

The Inspector concluded that the proposed siting of caravans for all year-round occupation for the purposes of human habitation does not fall within the scope of the 1980 permission or the LDC and would amount to a material change in the use of the land that would require planning permission. The Council's refusal to grant a certificate of lawful use or development in respect of the siting of caravans for all year-round occupation for the purposes of human habitation was well-founded and the appeal dismissed.

Application for Costs: A separate application for an award of costs against the Council was refused