HAYTOP COUNTRY PARK

WACAG's Closing Submissions

Abbreviations

NPPF	-	National Planning Policy Framework
TPO	-	Tree Preservation Order
5YHLS	-	5 year housing land supply
PoE, App	-	Proof of evidence, appendix
XiC, XX	-	Examination in chief, cross-examination
LDC/ Appeal	-	S.192 LDC ref: AVA/2019/0268/ Appeal against
Op Dev Appeal/Notice	-	Appeal against/ Enforcement Notice E/2019/0002
Change of Use Appeal/Notice	-	Appeal against/ Enforcement Notice E/2019/0001
TCPA 1990	-	Town and Country Planning Act 1990
The 1952 Permission	-	Planning Permission BER/352/12
The 1966 Permission	-	Planning Permission BER/064/39

Introduction

1. As I said in opening, the key legal principle in these three appeals is this: *a person cannot profit from their own wrongdoing.* That is the prism through which each of the appeals should be viewed. It is a principle that Mr Laister for the Appellant in XX accepted applies here. The Appellant should not be allowed, through a criminal act, to place himself in a better financial position than if it had not broken the law. If the Appellant succeeds in this Inquiry, he will have done exactly that. For that reason alone he should not succeed.

2. However, even if such extreme facts were not present in this case, all three appeals should be dismissed in any event.

3. These closing submissions are divided into the following sections:

   (1) The baseline position, including WACAG's interpretation of the two planning permissions,

   (2) The principle that one cannot profit from one's own wrong, and a summary of its application here,

(3) The legal grounds:

(a) *The LDC*:

1. Reason for refusal 1a
2. Reason for refusal 1b
3. Reason for refusal 2
4. Overall relevance of criminal conduct to the LDC appeal

(b) The Change of Use appeal

1. Ground (b)
2. Ground (c)
3. Ground (d)

(c) The Operational Development Appeal

1. Ground (b)
2. Ground (c)
3. Ground (d)

(4) The non-legal grounds:

(a) *The Change of Use appeal*:

1. Ground (a)
    a. Planning
    b. Heritage
    c. Landscape
2. Ground (f)
3. Ground (g)

(b) The Op Dev Appeal

1. Ground (a)
    a. Planning
    b. Heritage
    c. Landscape

2. Ground (f)

3. Ground (g)

(5) Conclusion

The Baseline Position

4. WACAG submits that the baseline position in each of these appeals is as follows:

(1) The unlawfully felled trees should be taken to be in the same places they were felled from (as this positioning is required by the Tree Replacement Notice),

(2) The Appellant has the benefit of the 1952 and 1966 permissions within the physical constraints of the site as it was before the felling, i.e: 60 tourers, 30 of which can be occupied all year round.

A. Baseline 1: The Replanting Order

5. It is clear that, irrespective of the Appellant's appeal against the Replanting Order, the unlawfully felled trees must be replanted in the same place.

6. Section 206 TCPA 1990 provides:

> "(1) If any tree in respect of which a tree preservation order is for the time being in force—
>
> (a) is removed, uprooted or destroyed in contravention of *the order* [tree preservation regulations][…]
>
> it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.
>
> […]
>
> (3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—
>
> (a) on or near the land on which the trees removed, uprooted or destroyed stood, or
>
> (b) on such other land as may be agreed between the local planning authority and the owner of the land,
>
> **and in such places as may be designated by the local planning authority**."

7. Thus by virtue of s.206(3), a LPA may designate a specific place for woodland trees to be replanted. This has happened here. The trees must be replanted in the places designated by the LPA- which is the places they were felled from.

8. In WACAG's submission this is a crucial element of the baseline for the site in respect of each of the appeals.

B. Baseline 2: the two permissions

Overview

9. In this section WACAG sets out interpretation of the two extant permissions, in order to explain the baseline planning position.

10. In summary, WACAG's position on the interpretation of the permissions is as follows:

    (1) There is an overall limit on the number of units which may be stationed on the site (60): see Condition 1 to the 1966 Permission.

    (2) Of those 60 units, the first 30 are authorised by the 1952 Permission, which specifically restricts the type of "mobile home" permitted to "touring" caravans: see the Note and Condition (a) and (e) of the 1952 Permission. These tourers can be occupied all year round.

    (3) The remaining 30, which are authorised by the 1966 Permission, must be "seasonal and towing" caravans and are similarly limited to tourers only, because the definition of "mobile dwelling" from the 1952 permission is incorporated into the 1966 permission. These caravans are subject to Condition 5, which states that they may only be used seasonally and none of them may be used as a permanent residence.

    (4) The notional 60 total units are also limited in practice by:

        (a) The physical constraints of the site, including the position of the felled trees;

        (b) The Central Green area that is currently subject to an injunction; and

        (c) The restriction on year-round occupation that applies to half of the notional units.

    (5) They may also be limited by the terms of any site licence that is granted in the future.

The 1952 permission

11. It is a matter of agreement that the Note to the 1952 permission is incorporated in the description of development in the 1952 permission: thus the 1952 permission permits only

"trailer caravans specifically designed and constructed for drawing by private car, and motor caravans in full mechanical order, in all cases complying with Ministry of Transport Acts and Regulations, and horse drawn caravans of the gypsy type."

12. It is a matter of agreement that there is no condition on seasonal occupancy. Thus these units can be occupied all year round (although in WACAG's view, the limitations as to *type* mean that full-year occupancy is unlikely in practice- which is highly relevant to the baseline position).

13. There is a dispute as to whether the 1952 permission contains a *condition* restricting unit type. The Appellant states that it does not.

14. WACAG disagrees:

(1) Condition (a) of the 1952 permission limits the type of development. When Condition (a) refers to "mobile homes", it is clear that it does so in the sense of the "bespoke" definition.

(2) Conditions attached to a planning permission are to be construed benevolently, and given a common sense meaning. In *Trump International Golf Club Scotland Ltd v. the Scottish Ministers* [2015] UKSC 74, Lord Carnwath observed that:

"When the court is concerned with the interpretation of words in a condition in a public document … it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole."

(3) Read together with the Note, and in the context of the 1952 Permission as a whole, a "reasonable reader" would conclude that Condition (a) and (e) restricts the use of Haytop to the siting of 30 "mobile dwellings", as defined in the Note:

(a) Condition (a) restricts both number and type. Unlike the case referred to by the Appellant on this point, *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin), here we have a Note which is directly incorporated into the description of development as well as the conditions ("for the purposes of this consent").

(b) The reference to "structures" in condition (e) is a reference to caravans:

1. The statutory definition of a caravan begins *"any <u>structure</u> designed or adapted for human habitation which is capable of being moved from one place to another…"* (s.29(1), Caravan Sites and Control of Development Act 1960)

2. Clearly, in layman's terms (if not formal planning terms), a mobile dwelling can be "erected" in the sense of being temporarily affixed to the land.

3. Mr Laister suggested that the reference to structures is the wooden bungalow only. However, Condition (c) refers to *multiple* structures. This only makes sense if "structures" is a reference to "caravans."

(4) Overall, though imperfectly worded, the content of the permission is clear. The type of caravan permitted under the 1952 permission is restricted by condition.

The 1966 permission

Does the 1966 permission supersede the 1952 permission?

1. The Appellant appears to maintain the suggestion that the 1966 permission supersedes the 1952 permission in respect of the restriction on type of caravan, and so the statutory definition of a caravan applies to all 60 units. WACAG disagrees. WACAG submits that the 1966 permission does not supersede the 1952 permission in this respect:

(1) The 1966 Permission is expressed to be for the "extension" of the existing caravan site "from 30 to 60 caravans". It is clear from this that the 1966 permission does not re-grant permission for the 30 caravans already consented under the 1952 permission. Rather, the units authorised by the 1966 Permission are those "from 30 to 60". The permission is thus explicitly for the additional units. The use of the word "supplementary" is also of importance here.

(2) Condition 5 precludes permanent residential use of caravans stationed at Haytop under the 1966 Permission, and this restriction is enforceable. The Appellant appears to agree that this refers only to the 30 additional units. If the 1966 permission did encompass all 60 units, none of them could be used all year round.

(3) The *Wyre Forest* case[1] cited by the Appellant on this point[2] does not assist. In that case the purpose of the later permission was to replace an existing temporary permission which was due to (and did) expire. The fact that the later permission encompassed the expanded definition of a caravan was inevitable in that case, because unlike this case there was no continuing permission.

[1] *Wyre Forest District Council v. Secretary of State for the Environment* [1990] 2 AC 357; where the House of Lords concluded that an application for the "continuation of use" of an existing caravan site did not preclude interpreting the word "caravan" in the later consent in accordance with the statutory definition.
[2] NL PoE, 4.8-4.11.

What kind of occupation is permitted for the caravans under the 1966 permission?

2. Condition 5 of the 1966 permission limits use to "seasonal use" and states that "no caravan shall be occupied as a permanent residence". In WACAG's view it is obvious what this means: the holiday season. 'Seasonal' implies a season. The fact that the season is not strictly defined does not detract from the clear intention that the dwellings in question are not to be occupied all year round: see *Cotswold Grange Country Park v. Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin).[3]

3. Although the concept of "seasonal use" is not precise, it is obvious that the words "seasonal use" are intended to cover "the camping or caravanning season", and to preclude use at other times. Former Haytoppers Lee Harris-Redfern and Sara Gaynor told the Inquiry under oath that they were required to pack up their caravans at the close of the season, as one would expect from a seasonal campsite.

4. The core restriction is therefore sufficiently clear to be enforceable: in the same way that no-one would contest the right to use the caravans at Haytop in the period between Easter and the end of September, few (if any) would regard January, February, or October, November or December as falling within the caravanning "season".[4] What is obvious is that the first limb of Condition 5 was intended to prevent the use of the permitted caravans all year round.

5. WACAG note that this also was the view taken by Countrywide Park Homes Ltd when they first acquired Haytop in 2016, and sent residents including Lee Harris-Redfern a copy of the Site Rules (WACAG PoE App 1), which stated (emphasis added):

> "Occupation is permitted in each season in accordance with the Site licence and Planning Permission. Caravans must not be occupied outside this period."

6. WACAG agrees with this prior position taken by the Appellant. Contrary to Mr Laister's assertions in XX, the Appellant's position on the planning situation has clearly changed from this initial position.

What type of caravan is permitted by the 1966 permission?

7. WACAG agrees with the Council that the 1966 permission does not authorise the use of the site for the stationing of caravans as defined in statute:

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[3] Although not identical, the second limb of Condition 5 is not dissimilar to the condition in *Cotswold Grange* which stated, inter alia, that*: "caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole, or main place of residence."* Hickinbottom J said that this was *"clearly aimed at restricting the use of the caravans to holiday use"* without any suggestion or indication that the condition was vague or unenforceable.

[4] The Site Licence restricts occupation to the period 1 April to 30 September each year. While the Site Licence cannot be "read into" the 1966 Permission, it is a clear illustration of what is generally understand by the phrase "seasonal use".

(1) There is a specific reference in the description of development to *"seasonal and towing use."*

(2) Though undoubtedly ambiguous, the permission is stated to be *"supplementary"* to the 1952 permission. It refers to *"extending"* the *"existing"* site and uses the same phrase *"mobile dwellings."* Importantly, it directs the casual reader to go and read the 1952 permission, and provides a specific reference to it.

(3) Thus by reference to an extension, and by virtue of using the same language *"mobile dwellings",* the 1966 permission incorporates the same limitation on caravan type. While interpretation of a planning permission is usually limited to the permission itself, where there is ambiguity it is perfectly possible for a permission to incorporate an external document by reference: see *R. v Ashford Borough Council, Ex Parte Shepway District Council* [1999] P.L.C.R. 12, p 19.[5]

The Central Green

8. It is also important to note, particularly for the purposes of the Op Dev Notice, that condition 9 of the 1966 permission provides that

> "The central green on the site shall be maintained permanently open as a recreational area and neither tents, caravans nor buildings shall be permitted to be sited thereon."

C. Conclusions on baseline

9. Overall, WACAG's position is that the baseline here is 60 residential tourers. It has been suggested by the Appellant that this baseline means there is no intensification of use when changing to Twin-unit Park Homes for residential use. However:

(1) The practical reality is few people would want to occupy residential tourers all year round.

(2) The maximum number of caravans that could be sited on the Site would inevitably limited by the physical constraints of the site, including the Central Green and the recently felled trees.

10. There is necessarily a degree of overlap between the arguments used to establish this "baseline" position and the legal grounds below, which will be flagged where relevant.

[5] Cited with approval by the Supreme Court in *Trump International Golf Club Scotland Limited and another v The Scottish Ministers (Scotland)* [2015] UKSC 74, para 66.

2. The principle of not benefiting from your own wrong

D. The Appellant's criminal conduct

11. Before turning to each appeal, it is important to discuss the legal principle that one cannot benefit from one's own wrong. In this case, the wrong in question is a criminal wrong, not merely a moral wrong (although the latter alone is sufficient for the purposes of statutory interpretation).

12. The wrong in question is the Appellant's conduct in cutting down 120+ TPO Trees. The First-Tier Tribunal described this conduct as *"reprehensible, not merely incompetent."*[6] WACAG agrees with the First-Tier Tribunal.

13. The excuse given by the Appellant in this case should be taken with a pinch of salt, to put it mildly. Mr Laister claimed in XiC on the legal grounds that the Appellant was acting on bad advice. However, Mr Laister had no direct knowledge of the advice given, other than what his client told him.

14. Mr Laister referred in particular to an e-mail post-dating the felling (24 March 2017) at **PT App 15** (PDF 133) from the Appellant to Ms Natalie Osie of the Council. This e-mail purported to contain the advice of Rachel Whaley of GVA Surveyors saying that the tree felling would be lawful. However:

    (1) The text of this refers to Cupola, a different site;

    (2) Only an extract of the purported advice was produced in this e-mail;

    (3) The e-mail refers to a "detailed telephone conversation" with no further information.

15. The purported advice from Ms Whaley has not been produced before the Inquiry. She has not appeared to explain the advice she gave. WACAG invites the Inspector to place very limited weight on this e-mail as an explanation for the tree felling.

16. Even if the felling did begin under bad advice:

    (1) it was still a criminal offence, and

    (2) it continued after an express instruction from the Council to cease felling (an instruction which the Appellant stated to the Council, falsely, that it would comply with).

[6] See para 22 of the Upper Tribunal decision [2020] UKUT 0068 (LC).

17. It is clear from the witness statement of the Council's Tree Officer Ross Pearson [PT App 15] (PDF 78) that on Friday 17 March 2017, Mr Pearson visited the site following a number of phone calls from local residents, and instructed the workmen to stop felling the trees (Para 13; PDF 81). He stated he was satisfied that they understood that the works needed to stop.

18. Mr Peter McCartney, a local resident, stated under oath before the Inquiry that he called the site owner after hours on 17 March 2017. A lady answered, stating that they had permission to cut down the trees. This statement was of course false.

19. It is clear from the evidence placed before the Inquiry that on the balance of probabilities further tree felling had taken place over the weekend. The evidence establishing this is as follows:

    (1) The witness statement of Ross Pearson states at para 15 (PDF 82) that when he visited the site the following Monday:

    "I saw that since my visit on the 17th March 2017 <u>further</u> trees had been felled in the woodland on the opposite side of the track to the lodge."

    (2) Mr Joe Green stated under oath that he observed men felling mature trees with chainsaws over the weekend. Mr Green used binoculars and had a clear view of the Site from his house.[7]

    (3) Mr Peter McCartney, who said he had an "exceptionally clear view" of the site (and that he had a family expertise in tree felling), stated under oath that he saw large trees being felled on the site over the weekend.

    (4) Mr Quentin Hannant stated under oath that

    "I tried to contact the council again on Saturday but unfortunately the council offices were closed. I could see several fires in the area where the trees were being felled. I do not believe that the work carried out on Saturday and Sunday was simply clearing of rhododendrons and saplings because <u>I could see fewer and fewer trees standing and the area below the central green being systematically cleared</u>."

    (5) Mr Peter Yates stated under oath that he heard intense chainsaw activity and a huge amount of smoke on that weekend.

20. The evidence that illegal tree felling took place over that weekend is therefore overwhelming. WACAG invites you to find that on the balance of probabilities the felling took place over the weekend, and on the balance of probabilities it was not an

[7] as can be seen from WACAG's PoE p 97.

honest mistake on the Appellant's part. It was a cynical and calculated act, carried out while the Council offices were closed, in breach of express assurances given to the Council.

21. In response to this assertion, the Appellant has argued that he pleaded guilty on a different basis, and that when the Council objected to the basis of plea this was not taken any further by the magistrates' court. You have seen the Appellant's written submissions to the magistrates. But it is clear from the overwhelming written and oral evidence presented to the Inquiry that what the Defendants told the magistrates about what occurred on that weekend simply cannot have been true. This makes the Appellant's conduct even more serious. More than that: it is deeply alarming. As I set out in my opening, the Appellant's conduct was unconscionable, deceptive, and of course criminal.

E. Consequences of the Appellant's criminal conduct

22. What are the consequences of this conduct? Firstly, even if the trees are replanted exactly where they were removed from, the Appellant has still profited from his criminal conduct. This is because, as Mr Thompson noted in his XiC, the machinery used to carry out the works on the site simply couldn't have entered the site but for the unlawful tree felling. Thus even if the Tree Replacement Notice is complied with in full, the Appellant will be able to retain some of the financial benefit of the works carried out with that heavy machinery. In other words, he will have profited from his own criminality.

23. But as we know, the Appellant has no intention of replanting the trees exactly where they were. As Mr Laister noted in cross-examination under the legal grounds, the aspiration is to plant the trees at a different part of the site. If the Tree Replacement Notice appeal succeeds, the Appellant will have gained the value of several park homes through his criminal conduct that simply could not have been placed on the site but for his criminality.

24. In any event, given this Appellant's past conduct, WACAG submits that you can have no comfort that the Tree Replacement Notice will be complied with. In making this submission we cast no doubt on the obvious integrity and professionalism of Mr Laister and his team at RPS. But it is clear from the evidence before this Inquiry that their client simply cannot be trusted. Even where he deigns to follow the letter of the law, as Mr Laister accepted when we discussed compliance with the injunction on the Central Green, *"there may be a problem with the spirit."*

25. The unknown environmental consequences of the tree felling should not be ignored either. When asked an open question about the potential negative consequences, Mr Wallis, an expert arboriculturist and forester, explained that when felling a tree there is

an impact on a native flora and fauna that uses it as a host- he referred specifically to *"destroying or removing the ecological value of the tree."* The ecological value of over 120 trees has been destroyed here.

26. Conduct of this gravity has an important bearing on these appeals.

F. The legal principle that a person cannot profit from their own wrong

27. The legal principle that a person cannot profit from their own wrong is well-established. As I set out in opening, the law will bend over backwards to ensure a person does not gain a financial advantage from their wrongdoing.[8] The Court of Appeal in *R v South Ribble Borough Council, Ex p Hamilton* [2000] EWCA Civ 518; (2001) 33 HLR 9 stated that legislation should not be so construed as to enable a man to profit from his own wrong.

28. Such legislation includes the TCPA 1990. This was affirmed by the Supreme Court in *Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council* [2011] UKSC 15.

29. I will set out the effect of this important principle in respect of each of the appeals below.

30. Having explained WACAG's baseline and the principle of not profiting from your own wrong, I now turn to the legal grounds. Again, it is emphasised that there is a high degree of overlap between each of the grounds and the above discussion of the baseline.

The legal grounds

G. The LDC

31. Via the LDC (CLOPUD ref: AVA/2019/0268) the Appellant sought to establish the lawful principle of siting 30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation. Three reasons for refusal were given by the Council.

Reason for refusal 1(a)

32. Reason for refusal 1(a) stated

> "The lawful permissions for the site, namely the 1952 (BER/352/12) and 1966 (BER/064/39) permissions, do not allow for the stationing of twin-unit static caravans

[8] See *Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council* [2011] UKSC 15.

so far as material they relate only to touring type caravans and as such the twin-unit static caravans referred by the Applicant would not be lawful."

33. For the reasons already set out in relation to WACAG's interpretation of the permissions, the Council was clearly correct in this assessment. The permissions only allow the siting of tourers.

Reason for refusal 1(b)

34. Reason for refusal 1(b) stated

> "The permissions for the site do not allow for the engineering operations as undertaken/proposed and the nature of the operational development (including reprofiling of land to create terraces, other engineering and hard landscaping such as gabion retaining walls, brick skirtings, driveways, decking, metalled access roads, street lighting and other widespread exterior lighting and the establishment of gardens and these works fall outside of the remit of Part 5 Class B of The Town and Country (General Permitted Development) (England) Order 2015 (development required by a caravan site licence)."

35. To the extent that reason for refusal 1(a) is made out, so is 1(b) as it is the operational development that facilitated it.

36. However, for the reasons given below in relation to the Op Dev Notice, even if siting of twin-unit statics is lawful, the operational development here was not.

Reason for refusal 2

37. Reason for refusal 2 was:

> "The change from transient and seasonal use by touring type caravans to permanent use by static twin unit caravans would amount to a significant material change of use arising from the intensification of use, the engineering operations, establishment of domestic curtilages and paraphernalia and creation of light pollution and consequently this appearance of permanence and domestication would have a materially different impact on the site compared to touring units resulting in a significant change in the character and appearance of the site."

38. It should be recalled that in WACAG's submission the baseline position is a maximum of 60 tourers can be placed on the site, subject to the physical restrictions on the site pre-illegal felling.

39. The question is whether static twin unit caravans is a material change of use from this position. WACAG submits that it <u>is</u>:

(1) Twin-unit lodges are larger than tourers (and indeed single unit statics) and thus have a significantly higher visual impact.

(2) Significant earthworks are required to accommodate twin unit lodges, with a consequent impact on short-term visual amenity and long-term earth compaction (and consequent impacts on the surrounding trees).

(3) Twin-unit lodges are much more likely, as a matter of fact, to be occupied all year round compared to tourers due to better insulation.

(4) Twin-unit lodges are more likely to have domestic paraphernalia and curtilages more akin to a garden.

(5) It is also relevant that there has been an overall change in the character of the land following the tree felling and subsequent operational development. As Ms Evans noted in XiC, even if the tourers could have been occupied all year around there was a sense of transience and peacefulness in the previous site that has now been lost.

Implications of the principle of profiting from your own wrong

40. Alternatively, the Appellant's related criminal conduct would in these circumstances disentitle it to an LDC in these extreme circumstances, on the basis that Parliament could not have intended the TCPA 1990 to be used to allow an Appellant to profit from their own wrong. As Lord Mance noted in *Welwyn Hatfield* at [54]:

> "Whether conduct will on public policy grounds disentitle a person from relying upon an apparently unqualified statutory provision must be considered in context and with regard to any nexus existing between the conduct and the statutory provision."

41. Here there is a very strong nexus between the criminal conduct on site, the felling of trees, and the certificate applied for, which aims to regularise the Appellant's actions on the site (including the direct consequences of the tree felling). The TCPA cannot be taken to allow an appellant to commit a criminal offence, increase the value of his land off the back of that offence, and then immediately regularise the position: consolidating his ill-gotten gains.

42. In such extreme circumstances the Appellant must first put the land back into its previous condition before an LDC can be granted.

43. Finally, in the alternative, to the extent that the Appellant is successful in the LDC appeal (or on any of the legal grounds), WACAG invites you to emphasise in your Decision that the Appellant's success should not be taken to have any implications for the validity or proper interpretation of the Tree Replacement Notice. As we discussed in relation to conditions this morning, WACAG is deeply concerned that the Appellant will use any success in these appeals to argue that the felled trees should be replanted in a different place.

H. The Change of Use Appeal

Ground (b)

44. On the Appellant's ground (b), it is clear that static caravans were on site around the time of and/or shortly before the issuing of the enforcement notices.

45. As to Area B in particular, while WACAG understands why the wide enforcement area has been drawn by the Council, it has doubts about the use of large parts of Area B for the siting of caravans and indeed as an ancillary part of the caravan site in general. WACAG continues to doubt the agreed position of the main parties that the entirety of Area B comprises the same planning unit as Area A. This was not borne out by the evidence of Sara Gaynor and Lee Harris-Redfern. To WACAG's knowledge, only parts of Area B (invariably those directly adjacent to Area A), were used for the siting of caravans.

46. However, having heard the evidence over the course of the Inquiry, WACAG now takes a neutral position on the Planning Unit and the extent to which the Change of Use Notice Plan needs to be modified as a result.

Ground (c)

47. For the reasons set out above in relation to WACAG's interpretation of the two permissions, the Appellant does not have planning permission for the change of use alleged in the enforcement notice. Park Homes are not within the scope of either permission; alternatively they amount to a material change of use through intensification.

48. With respect to intensification, this case is similar to Appeal Decision APP/T3725/X/10/2135808 *Le Van, Red Lane, Burton Green, Kenilworth*, a case about intensification on Caravan Sites (in that case an increase from 3 to 8):

> "22… Mrs Taylor, representing the Burton Green Residents Association said that **the Association has not been aware of the existence of a caravan site close to the village and her husband emphasised the fact that the appeal site had no characteristics of a caravan site. Although I would have expected the Association to have been aware of the application subject to this appeal, I consider it significant that they have never perceived the site to be a caravan site and this adds weight to my conclusions about the change to the character of the use that would occur if this appeal were to be allowed.**
>
> 23. Overall it appears to me that the appellant has not demonstrated on the balance of probabilities that the increase in the number of caravans would only represent intensification of the use within the scope of the extant permission. I do not consider that the changes that would occur as a result of the increase would be 'more of the

same' but that **the changes to the openness and appearance of the site would be both material and significant."**

49. However, even if WACAG is wrong about this, the Appellant's related criminal conduct would again in these extreme circumstances preclude it from avoiding enforcement in relation to a use of land that is closely linked to the criminal conduct in question. Applying the test set out by the Supreme Court in *Welwyn Hatfield*, the "nexus" between the criminal conduct and what is being enforced against is again very strong here.

Ground (d)

50. In respect of ground (d), WACAG accepts that there have been seasonally used static caravans on site at various points in time. WACAG does not know for how long this has been going on for, or for how long each static has been sited. The pictures provided by the Appellant are in that respect only a snapshot in time.

51. It is also important to note that soon after purchasing the site the Appellant cleared off all the former residents in short order. There is no 'presumption of continuance' if an unauthorised use of land ceases, nor is a landowner's intention sufficient to maintain an unlawful use: see *Islington LBC v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2691 (Admin). In these circumstances the siting of twin-unit lodges is a new, freestanding use that is materially different to the baseline position, even if single-unit statics are included within the baseline.

52. WACAG agrees with the Council that the enforcement notice sufficiently captures twin-unit lodges as distinct from single unit statics: any disagreement on that point is a matter of cutting down the notice, not adding anything. If this did come as a surprise to the Appellant, he has had the entire Inquiry to rebut it (and has in any event asserted that the Council have offered no evidence on this point).

53. To the extent that the Appellant can show that single unit statics are immune from enforcement, it must also show that twin-unit statics are equally immune from enforcement. In WACAG's view, in the context of the special sensitivities of this specific site, the difference between a single unit lodge and a twin unit lodge is highly significant and does amount to a material change of use through intensification. The new park homes are highly visible and have a starkly domestic character compared to previous single statics that were tucked away between the trees.

54. Finally, even if you are persuaded that the Appellant would otherwise succeed under ground (d) in its entirety, the Supreme Court has made it clear that enforcement time limits are not immutable if their application would allow someone to profit from their own wrong. Thus in *Welwyn Hatfield* the Supreme Court disapplied the enforcement time limit for a man who constructed a house inside a barn to hide it from his Council.

Lord Rodger at [63] said *"it is unthinkable that Parliament would have intended the time-limit for taking enforcement action to apply in such circumstances."*

55. It is notable that in *Welwyn Hatfield*, the individual's conduct was not even criminal. By contrast, here you have a situation where if the enforcement time limits do defeat the notice, the Appellant will be allowed to keep the park homes facilitated by the felling and thus profit from his own criminal activity. Parliament could not have intended the time limits in the TCPA to be abused in this manner.

I. The Operational Development Appeal

Ground (c)

56. The Appellant argues that the operational development carried out is permitted development under Schedule 2 Part 5 Class B of the GPDO. This permits development *"required by the conditions of a site licence for the time being in force under the 1960 Act."*

57. This position is unarguable.

58. Firstly, the Council does not accept that there is currently a site licence in force.

59. Secondly, to the extent that a licence is currently in force in respect of the Site, it is the 1968 licence (PT App 4 (PDF 13)). This has strict conditions including:

(1) Condition 4: *The caravan standings shall be sited within the area shown as groups A-H on the plan attached to the licence.*

(2) Condition 5: *The caravans occupying the licensed site shall be of the car trailer type.*

60. It is fanciful to suggest that the operational development in question is *"required"* by these conditions. "Required" means "is necessitated by". These works are not necessary to comply with the 1968 site licence. On the contrary, the works facilitate a use which is in direct breach of the 1968 site licence conditions. That is not what the GPDO allows.

61. A model site licence was produced by the Appellant at various points in the Inquiry, but the fact is this licence does not yet exist, even if it could conclusively be said that a future licence will reflect it (which it cannot). Class B allows development "required by the conditions of a site licence for the time being in force". It is not forward looking.

The non-legal grounds:

A. The Change of Use appeal:

Ground (a)

Heritage

62. As was noted in WACAG's Opening, the site is in the buffer zone of a UNESCO World Heritage Site. World Heritage Sites are of global significance. The DVMWHS was given its status due to it *"exemplifying, the historical theme of the innovation of the textile mill and the economic and social infrastructure of the site as the 'Cradle of the Factory System"*.[9] The Derwent Valley is one of the few places in the world where you can still see the very beginnings of the industrial revolution: early industrial development nestled in the natural landscape. Under XX, Mr Copp accepted that World Heritage sites are at the top of the pyramid when it comes to heritage significance. Mr Lathbury notes in his PoE at 4.3 (PDF 18) that

> "The Haytop site contributes to the setting of the Derwent Valley Mills World Heritage Site, as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape', therefore being an attribute itself."

63. Paragraph 184 of the NPPF recognises that World Heritage Sites are heritage assets of the highest significance which are internationally recognised to be of Outstanding Universal Value. When considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. Para 184 notes that such World Heritage Sites in particular *"are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations."*

64. In this case, great weight should be placed on the harm to the WHS. This is not least because compared to other WHSs, the buffer zone of DVMWHS is particularly critical: it is the rural setting of the WHS that makes it so special, as the Management Plan notes (MM App A, p 16 (PDF 18)).

65. Para 193 of the NPPF provides that "great weight should be given to a designated heritage asset's conservation, irrespective of whether the harm is less than substantial." Great weight should go in the balance here.

66. As Melanie Morris noted in XiC, the manner in which the Site and its surroundings are experienced in that context have been largely unchanged for hundreds of years. She

[9] See Appendix B to Adam Lathbury PoE, p 12.

referred in particular to the description of the Alderwasley Forge by William Adam in 1845 (MM PoE 4.8 (PDF 15):

> "This is the commencement of the celebrated shining cliff, which bounds the beautiful valley to the southwest, as far up as Hotstandwell bridge, covered with the most luxuriant vegetation, splendid oaks, &c,, and abounding with wild plants and flowers."

67. As to Alderwasley Hall, Mr Copp in XX agreed that his assessment of the "dislocation" as he put it might well change depending on how recently the modern features of the Site were put in place, "the critical point" being "how [the setting] is understood today". As it happens, until very recently the Site was understood to be a clear part of the setting of the Hall: it is only the recent signs, fences and CCTV put up by the Appellant that may tend to put off those less familiar with the recent history of the Site in relation to the Hall. Though these new elements are not all the subject of these appeals, their recent introduction means less weight should be given to any contrast between the Hall and the Site with all these elements in place: clearly until very recently the Site was more sympathetic to the Hall's setting.

68. Mr Copp also accepted in XX that night-time lighting is relevant to how people experience the World Heritage Site. In this case, there is likely to be significant additional lighting as a result of the Park Homes now put in place, particular as their occupancy in winter is more likely compared to a similar or greater number of touring caravans.

Landscape

69. WACAG submits that the landscape impact of this development weighs heavily against the grant of planning permission. The site was previously almost invisible to residents, and certainly went unnoticed: now, as we heard from local residents, the site stands out like a scar on the landscape.

70. In assessing the landscape impact, the Appellant's expert Mr Wilson began his assessment from the wrong baseline: how the site is now, without any consideration of the trees that have been felled. He said in XX that it was difficult to tell how much of his assessment would have to change to accommodate this baseline. He also referred at multiple points to the aspiration for a carefully designed tree planting scheme, which is yet to be carefully designed, and he relied on this hypothetical scheme to argue that the wooded character of the site would improve. Having seen the WACAG photos from Hindersitch Lane in particular, he also accepted that there were clear views of the Site from several residential properties.

71. Ms Evans did begin from the correct baseline. She noted that the Site was currently "at odds with the surroundings", and came across as "manipulated" and "engineered." She

said that the Park Homes were for all intents and purposes bungalows physically fixed to the land, adding a sense of permanency in the landscape. She added that the woodland planting required would take time to grow and would not meet the expectations of the Appellant in terms of screening or mitigation. By contrast, the previous state of the site was constrained, with caravans tucked between mature trees.

72. Ms Morris noted in XiC that Alderwasley Hall is supposed to be the centre of the designed parkland landscape. She noted that further development will make a significant intrusion into the setting of the WHS- it will draw the eye, and the Hall will longer be the main focus of e.g. her Viewpoint 5 (MM App 3 (PDF 23)).

Planning balance

73. The appellant's criminal conduct as set out above is clearly a material consideration that weighs heavily against the grant of planning permission; just as intentional unauthorised development is a material consideration in the planning balance.[10] Planning permission should be refused on this basis alone.

74. For the reasons given above, the Heritage and Landscape factors that weigh against the grant of permission are heavy indeed. It is also common ground that the Council has a 5YHLS.

75. As to benefits, these are minimal. Mr Laister said that the proposals would amount to specialist accommodation for the elderly. He then accepted the site has been marketed to over 45s rather than the elderly. It appears that the current occupants are in their 50s. It is implausible to suggest that when the NPPF refers to specialist accommodation for the elderly, it is referring to Park Homes for people in their 50s.

76. In any event, the Site is not well suited to the very elderly. It is a long, hilly walk to the nearest train, bus, GP, Post Office and shop. No information has been provided on bus routes or train timetables. In WACAG's experience, nearby public transport is very limited indeed.

77. Though he later rowed back, Mr Laister began by saying his conclusion on the planning merits was "finely balanced" in this case. He later clarified that this was a case where "the impacts are complex and difficult." He accepted that he did not consider the removal of the trees in the balance, because he treated it as being dealt with under a separate process. As WACAG has already noted, this is the wrong baseline. Mr Stafford's position on planning merits is to be preferred: you simply cannot disregard the illegal tree felling.

[10] See the WMS on intentional unauthorised development: https://questions-statements.parliament.uk/written-statements/detail/2015-12-17/hcws423

Ground (f)

78. In WACAG's view the steps required under the Change of Use notice are not excessive. The situation the Appellant finds himself in is entirely of his own making. The previous use of the site did not include twin-unit statics and, in any event, a reversion to the previous condition of the site in its entirety is required in order to replant the lost trees.

Ground (g)

79. In WACAG's view 6 months is entirely appropriate. What is inappropriate is placing residents on a site with an uncertain planning and licencing position and then relying on their occupation as an argument to regularise both. The Appellant attempted a similar argument in the Upper Tribunal with respect to the site licence: the Upper Tribunal said *""...the absence of a licence is a problem for the current residents but that is a problem that the respondent (HCPL) has created..."*

80. WACAG agrees. The existing residents moved in at risk. If they were unaware of the risk, they would have an obvious financial remedy in the courts, against the Appellant or their own advisors.

B. <u>The Op Dev Appeal</u>

Ground (a)

81. WACAG considers the ground (a) position under the Op Dev Appeal to be the same as under the Change of Use appeal.

Ground (f)

82. As to the suggestion put to Mr Stafford in XX that it would be a waste of time to require removal of development that can be reinstated later under PD rights:

    (1) There is no guarantee the Appellant will receive a site licence. The Council can refuse to give him one on the basis that he is not a "fit and proper person" under s.32E of the Caravan Sites and Control of Development Act 1960. The Council surely has a strong case that a person convicted of a criminal offence on the site in question is not a fit and proper person to run it.

    (2) The removal of the development will be necessary to replant the felled trees in any event.

(3) The contents of a future licence is pure speculation.

(4) With respect to the road in particular, it is already encroaching on the Central Green contrary to the 1966 permission and the "spirit" of the injunction (in Mr Laister's words). It needs to go.

(5) The plain fact is there is no permission currently in place for this work. The fact that the Appellant may be able to use the GPDO at a later stage is of limited relevance. To the extent that he finds himself in a position where he must remove operational development and may be able to put it back in some modified form later, he is in a mess of his own making.

Ground (g)

83. For the reasons previously given, WACAG does not agree that 12 months is required to put the site back into its previous condition.

Conclusion

84. For these reasons, each of the appeals should be dismissed.

85. On the Appellant's costs application, WACAG would only state that this is an unusually complex appeal. In circumstances where there are many variables and disagreements as to the baseline position, it is hard to see how the high bar for a costs award has been met here. WACAG considers that the Council's approach has been reasonable throughout.

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