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PARTNERS IN PLANNING

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Certificate of Lawful Development
Bay Farm Grange Road, Bursledon,
Hants, SO31 8GD
Date: August 2024

Planning Statement

Application under Section 192 of the Town and Country Planning Act 1990 for mixed-use of the site for residential caravan site (7no. mobile homes and 1no. tourer) with private amenity land and caravan and vehicle storage

at

Bay Farm Grange Road, Bursledon, Hants, SO31 8GD.

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1. Introduction

- 1.1. This Planning Statement has been prepared by Laister Planning Limited (LPL) in support of an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) made under Section 192 of the Town and Country Planning Act 1990 (the TCPA, as amended), for a *"Mixed use of the site for residential caravan site (7no. mobile homes and 1no. tourer) with private amenity land and caravan and vehicle storage"* at Bay Farm Grange Road, Bursledon, Hants, SO31 8GD.
- 1.2. The application comes following the issuing of earlier Lawful Development Certificates (LDC) at Bay Farm on the land confirming the authorised use of the site, subject of the certificate, to be a *"Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage"* LPA ref. LDC/22/93814 (attached at Appendix 1) and further land as *"Private amenity land ancillary to the residential use of land shown on the plan attached edged red"* LPA ref. LDC/24/96868 (attached at Appendix 2). These two LDCs cover the area of land that constitutes the current application site.
- 1.3. The application seeks to establish the lawful principle of the proposed use of the land edged in red on the application's accompanying Site Location Plan (Drwg. No. 001) for a mixed-use site comprising a residential caravan site (7no. static caravans and 1no. residential touring caravan), with private amenity land and caravan and vehicle storage (same mixed use as existing), without the need to obtain further planning permission.
- 1.4. For the avoidance of doubt, the application does not include any operational development that may be required to support the caravan site use, such as those that might be required by conditions of a caravan site licence issued under the Caravan Sites and Control of Development Act 1960 (the 1960 Act). As we discuss further below such operational development is normally permitted development under Town and Country Planning (General Permitted Development) Order 2015 (GPDO, as amended), Schedule 2, Part 5, Class B.
- 1.5. This Planning Statement is accompanied by the following documentation:
 - Cover Letter
 - Requisite Application Form (via the Planning Portal Ref: PP-13288892).
 - A Site Location Plan at Scale 1:1250, Ref. Site Location Plan – 001
 - Relevant Planning Application Fee paid online by the applicant.
- 1.6. The Local Planning Authority (LPA, or Council) for the site is Eastleigh Borough Council.
- 1.7. Section 2 of this Planning Statement considers the definitions and guidance in relation to S192 applications, caravan sites, caravans, and the interrelationship between planning and licensing for caravan sites. Section 3 describes the site context and relevant planning history. Section 4 sets out the proposals. Section 5 considers the caravan site use in the context of the planning unit. Within Section 6 we provide the main assessment considering the lawfulness of the proposal, including whether the proposal amounts to a material change of use, particularly a change in the character of the use itself, in the context of relevant case law. Our overall conclusions are summarised in Section 7.



2. Definitions and Guidance

Purpose of an Application Under Section 192 of the TCPA

- 2.1. The Planning Practice Guidance (PPG) on Lawful Development Certificates explains the process for obtaining a Certificate of Lawfulness of Proposed Use or Development (CLOPUD). The PPG advises that an LPA can grant a certificate confirming that a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.
- 2.2. The guidance advises:

“Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4))”.
- 2.3. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“In summary lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.”
- 2.4. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate”.
- 2.5. The PPG (Paragraph: 006 Reference ID: 17c-006-20140306) goes on to advise:

“In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved”.
- 2.6. And further at Paragraph: 009 Reference ID: 17c-009-20140306 that:

‘A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

‘In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

Definition of a "Caravan Site" and "Caravan"

- 2.7. The House of Lords decision in ‘Wyre Forest 1990’ (Wyre Forest District Council and SoS and



Other, 1990 [2 A.C. 357]), dealt with a permission for the use of land as a caravan site in which the council objected. The case considered the definition of a 'caravan site' and a 'caravan' and examined a case of whether a chalet was a 'caravan'.

2.8. Bridge L.J. states at Page 368, Part F:

"My Lords, I have to say that none of the foregoing observations dissuade me from the view that the terms 'caravan' and 'caravan site', when used at any time since DDay [being the commencement of the Caravan Sites and Control of Development Act 1960, which defined both terms in statute] in any formal document under the Planning Acts, prima facie have the meaning which they are given by the Act of 1960 as amended."

2.9. The case was allowed with the Council paying the appellant's costs. Therefore, the definition of a 'caravan site' and a 'caravan' are as set out in the 'Caravan Sites and Control of Development Act 1960' ('the 1960 Act').

Caravan Site

2.10. Section 1(4) of the 1960 Act provides the definition of a 'caravan site' as follows:

'...the expression "caravan site" 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'.

2.11. Planning control adopts the same definition arising from the 1960 Act, as set out in Section 336 (Interpretation) of the Town and Country Planning Act 1990 (the '1990 Act', as amended). Section 336 of the 1990 Act states:

'In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the Planning (Consequential Provisions) Act 1990, 'caravan site' has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960'.

2.12. A 'caravan site' is statutorily defined in both planning and licensing terms. There are elements of caravan site which are used for the stationing of caravans, and areas which are used for ancillary purposes such as the roadways, private garden areas, service areas, car parking, open space and recreation areas, storage, caravan sales, etc.

Caravan

2.13. Section 29 of the 1960 Act provides the definition of a 'caravan' as follows:

"caravan" means 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, but does not include—

(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

(b) any tent'



2.14. The definition of a 'caravan' in section 29 above was amended by section 13 of the 'Caravan Sites Act 1968' (the 1968 Act) to cover 'Twin-unit caravans'. Section 13 of the 1968 Act was amended by 'The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006'. The definition of a 'caravan' is now therefore as follows:

(1) A structure designed or adapted for human habitation which—

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)

shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—

(a) length (exclusive of any drawbar): 65.616 feet (20 metres);

(b) width: 22.309 feet (6.8 metres);

(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10.006 feet (3.05 metres).

2.15. For planning purposes, both the Town and Country Planning Act 1990 (the '1990 Act', as amended), and The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the 'GPDO') each adopt this singular definition of a caravan.

2.16. The definition within the 1960 Act includes all types of caravans as being the same and interchangeable, including touring caravans and static caravans.

2.17. Therefore, a consent for the siting of caravans is a use of land, and not in itself operational development. Unless restricted or controlled by condition, caravans can normally be sited anywhere within an area covered by a planning permission. The layout of a site; the caravan types that can be sited there; and the maximum numbers of caravans that can be sited, can only be restricted by condition.

Interrelationship Between Planning and Licencing Caravan Sites

2.18. A dual control system exists between the 1990 Planning Act and the 1960 Caravan Act. The conventional differentiation applied is that planning permissions should be issued mainly



on the basis of the principle of the use of the land as a caravan site and its external effects, and that site licences should be concerned with internal arrangements of the caravan site which affect only the users of the site and are primarily concerned with health and safety.

- 2.19. The licensing process, using model standards, would normally dictate the precise layout and spacing of individual caravans; the requirement for infrastructure, ancillary development; and other features of the caravan site.
- 2.20. Schedule 2, Part 5 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015, as amended) covers permitted development at caravan sites and recreational campsites. Class A covers use of land as a caravan site and, 'The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2' is permitted development. Class B covers '*development on caravan site required by conditions*'. The following is permitted development:

"Development required by the conditions of a site licence for the time being in force under the 1960 Act".

- 2.21. Under normal circumstances, the roads, paths, hardstandings and other necessary infrastructure (including the laying out of private amenity space) are covered by the site licence and would be permitted development should the site licencing require such features. Planning considerations should therefore only relate to the use of the land for the intended purpose (in this case, being the siting of caravans), and not make any assessment of any operational development that would accompany the development.
- 2.22. We discuss the principles of the case law in the assessment of the proposed use later in this report.



3. Site Context & Planning History

Site and Surroundings

- 3.1. Bay Farm is located on the north-east side of an unnamed private roadway which leads south-east from Grange Road to the northeast of the village of Butlocks Heath in the Parish of Hound.
- 3.2. The application relates to an area of land that forms part of the wider Bay Farm site, rectangular in shape, measuring some 0.57Ha in area, accessed via an existing gated access off Grange Road located at the southern end of the site which serves the Bay Farm site.
- 3.3. The site is relatively level and quite open, with no trees of note on the site. To the north and south of the site lies open countryside, to the west is an industrial site used in association with the marine industry, with Sunnysdale Farm Caravan Park & Storage site further to the west. Oak Farm and Pennywise Farm lie to the east of the site. The site is largely bounded by post and rail fencing to the rear (northern) part of the site with high hedges a feature around the southern half of the site, particularly prominent along the boundary with the industrial site to the west and at the front of the wider site on access road.
- 3.4. Further land in the applicant's ownership (the wider Bay Farm) sits immediately to the south-west of the application site, including the applicant's own residence and agricultural barns and stables further beyond.
- 3.5. In terms of notable site constraints relevant to planning, the site is not within a conservation area and there are no heritage assets within the vicinity of the site. The site is not within an area covered by any landscape or ecological designations. The site is not located in area flood risk being in Environment Agency Flood Zone 1. The adopted Local Plan policies map identifies the site as being within the countryside and within a wider area designated as a Settlement Gap.

Planning History

- 3.6. A review of the planning history for Bay Farm has been undertaken. The following applications have been identified via the Council's website, and in engagement with the planning team at the LPA during the more recent LDC applications relating to the Bay Farm site.
- 3.7. Recent lawful development certificates (LDC/22/93814 and LDC/24/96868) issued by the LPA are key material considerations and confirm the lawful use of the application site and establish the baseline against which this application should be assessed.

Application Ref: LDC/24/96868

- 3.8. A Lawful Development Certificate Ref. LDC/24/96868 was issued in July 2024 which confirmed land at Bay Farm Private as amenity land ancillary to the residential use of land shown on the plan attached edged red.





Figure 1: Extract from approved Site Location Plan Ref. LDC/24/96868

- 3.9. This certificate came following the issue of an earlier LDC (LDC/22/93814, detailed below) and resolved the use of the land at the northern end of the Bay Farm site that originally formed part of that application but was removed to allow for a positive determination of the application, following concerns being raised by officers in relation to the application not, in their opinion, sufficiently demonstrating a continuous ten-year use for mixed-use purposes as specified within the application.
- 3.10. Additional information was submitted with the application demonstrating that the site had been used for purposes ancillary to the residential element of the mixed use confirmed under LDC/22/93814, for a period well in excess of 10 years.

Application Ref: LDC/22/93814

- 3.11. Prior to the above application a lawful development certificate was issued by the LPA in August 2023 which confirmed the lawful use of part of the Bay Farm site (as identified on site location plan accompanying the decision notice (ref.: Site Location Plan – Revision A), seen below) as a "Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage".



Figure 2: Extract from approved Site Location Plan Ref. LDC/22/93814



- 3.12. The application originally also originally included the area of land to the northern end of the Bay Farm site, subject of application LDC/24/96868, this area of land was removed to allow for a positive determination of the application, following concerns being raised by officers in relation to the application not, in their opinion, sufficiently demonstrating a continuous ten-year use for mixed-use purposes as specified within the application.

Other History

Application Ref: F/10/66559

- 3.13. Planning permission was granted for the Change of use of land to gypsy caravan site accommodating 3no. mobile homes, 3no. touring caravans and 3 Day Rooms, on the 15 February 2012. As can be seen from the schedule of conditions attached to the permission (detailed below), this was a personal permission with Condition 2 of the permission requiring that the permitted mobile homes were not to be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn & Mr Paul Franklyn.



Figure 3: Extract from location plan (Plan 1) ref. F/10/66559

- 3.14. Permission F/10/66559 schedule of conditions:

1. *The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1, Plan 2, Plan 3, 10072.*
2. *The mobile homes hereby permitted shall not be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn & Mr Paul Franklyn. Reason: The application has been approved due to the exceptional circumstances of the applicant.*
3. *Within one month of the date of this permission post and rail fencing and conifer hedging between the domestic curtilage and agricultural land as indicated in between points AA on plan 2 shall be erected/planted and thereafter shall remain for the duration that the mobile homes are retained on site.*
4. *The site shall not be occupied by any persons other than gypsies and travellers as*



defined in paragraph 15 of ODPM Circular 01/2006.

5. *No part of the land outside the area within the red line on plan 1 shall be used for the purpose hereby approved including those ancillary thereto.*
6. *No more than three mobile homes and three caravans kept for touring shall be stationed on the land at any one time.*
7. *No open storage of goods or materials ancillary to any business activities of the occupants of the mobile home shall take place within the area defined by the red and blue line as indicated on the approved 1:1250 location plan (Plan 1).*
8. *Not more than 1 commercial vehicle not exceeding 7.5tonnes (gross weight) used in connection with the occupation of the occupiers of the mobile homes on the land and not more than one trailer shall be kept on the land within the red line at any one time. No vehicles or trailers shall be kept on the blue land to the north of the application site.*
9. *Details of the proposed treatment of the site boundaries must be submitted to and approved in writing by the Local Planning Authority and the approved measures must be implemented by a date to be agreed with the Local Planning Authority.*
10. *The boundary hedging along the northwest boundary shall be retained in its entirety at a height of no less than 3m.*

- 3.15. As confirmed through the recent LDC (LDC/22/93814), although the 2012 development could have been considered implemented by virtue of being retrospective, the evidence set out in the LDC application was that the site was in a mixed used materially different to the permission and that the use described in that permission (F/10/66559) had not taken place at any time since it was implemented. This permission has been largely replaced by LDC/22/93814.

Application Ref: Z/35996/002/00

- 3.16. Planning permission was granted for 'Retention of ancillary amenity building' on the 21 June 2001. This building remains on site to date and has relatively recently been refurbished with new toilet, shower and washing facilities having been installed.



Figure 4: Extract from Location Plan ref. Z/35996/002/00



- 3.17. Conditions attached to the permission required that the building was only for domestic purposes only used in conjunction with the existing mobile home, must be used only for purposes incidental to the enjoyment of the mobile home and shall not be used for any business, commercial or industrial purposes and that the amenity building was only to remain on the site for the duration of the occupation of the mobile home, after which time it shall be removed and the land reinstated to its original state. It is notable that the current LDC application site is included within the redline application boundary for the application (Z/35996/002/00), in some respects acknowledging the wider use of the site for residential purposes and in the same planning unit.

Application Ref: Z/35996/001/00

- 3.18. Following an enforcement notice being served on the site on the 9th April 1999, alleging a breach of planning control that without planning permission there had been a change of use of land from agriculture to part residential use by the siting of a mobile home and touring caravan (LPA Ref: 35996/1), a retrospective application for full planning permission for use of land as gypsy caravan site for one family (one twin unit mobile home) was made on the 30 April 1999.
- 3.19. The application was refused on the 21 September 1999, with 4 reasons cited including: 1. lack of agricultural or recreational justification for development in the countryside area, 2. the site was within a Strategic Gap where development is not normally permitted, 3. the site was considered not to be located within a reasonable distance of schools, medical services, shops and other facilities and 4. the development was considered to have an unacceptable impact on the character and appearance of the countryside.
- 3.20. Both the enforcement notice (Appeal ref: T/APP/W1715/C/99/1022494) and refusal of planning permission (Appeal ref: T/APP/W1715/A/99/1029872) were successfully appealed with the enforcement notice being quashed and planning permission granted for the continued use of land as gypsy caravan site for one family (one twin unit mobile home) on 07 December 1999.

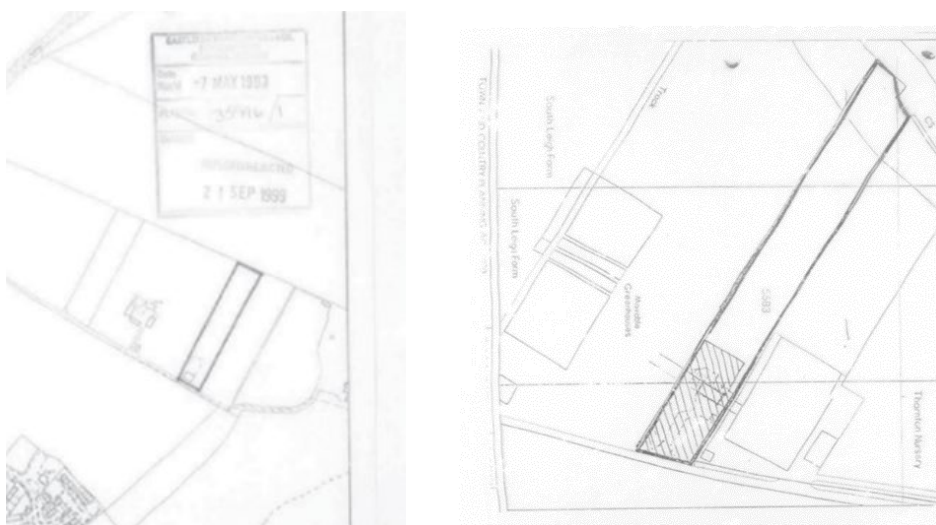


Figure 5: Location Plan (left) and Plan No. NH14 (right) ref. Z/35996/001/00

- 3.21. This permission relates to the applicant's own residence which sits immediately to the



south-west of the application site area but includes the whole of the Bay Farm site within the application's site boundary, suggesting that consideration during the application assessed the site as being a single planning unit.

3.22. Conditions attached to the appeal permission restrict the use of the site:

- a) This permission does not authorise use of the land as a caravan site by any persons other than gypsies as defined in section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended;*
- b) No part of the land outside the area cross-hatched black on Drawing No. NH14 shall be used for the purposes hereby permitted including those ancillary thereto;*
- c) Not more than 1 mobile home used for human habitation and 1 caravan kept for use for touring shall be stationed on the land at any one time;*
- d) Not more than 2 commercial vehicles not exceeding 7.5tonnes (gross weight) used in connection with the occupation of the mobile home on the land and not more than 2 trailers shall be kept on the land at any one time;*
- e) No storage of goods or materials ancillary to the business activities of the occupants of the mobile home shall take place outside the buildings on the site.*

3.23. While this permission was implemented, clearly the subsequent mixed use of the Bay Farm site does not align with the permission that was granted by the Inspector, as confirmed by the issuing of the 2023 LDC by the authority. This probably remains the operative permission for the southern part of the site, where the applicant lives, but not for the remainder of the site.

3.24. Further applications have been made on the wider Bay Farm site and these are summarised for completeness below.

Application Ref: PN/18/84077

3.25. An application for Prior Approval under Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) was made on 17 September 2018 for a change of use from agricultural storage to Class C3 dwelling. It was refused on the 24 October 2018, with two reasons cited, relating to a lack of evidence being submitted to support the application to demonstrate to the LPA's satisfaction that the site was used solely for an agricultural use, as part of an established agricultural unit; and further that again there was a lack of evidence submitted to confirm the status of contamination of the land, which could pose a risk to the proposed sensitive use, or how the development would be carried out without a complete reconstruction of the existing building.

3.26. Within the Officer's delegated report it is noted that in their assessment of the proposals against the criteria within Class Q, the officer states that: 'It is considered on the balance of all probability that this building is currently still being used in association with the occupants commercial interests but is not currently used for agricultural purposes and was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013'.



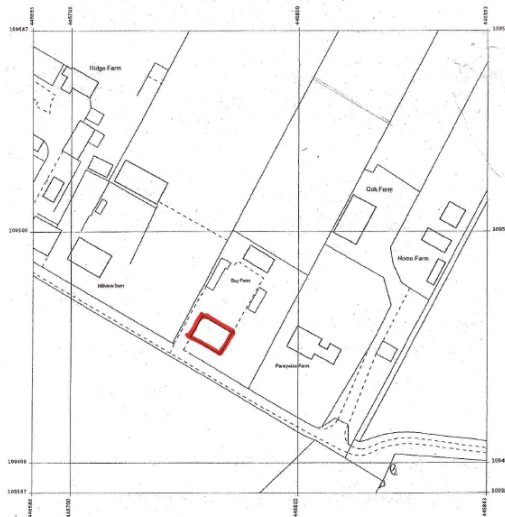


Figure 6: Extract from Location Plan ref. PN/18/84077

Application Ref: F/13/71899

- 3.27. An application for full planning permission was made for Construction of single storey 3/4 bed dwelling, following demolition of existing mobile home & outbuilding was made on 19 December 2012. It was refused on the 13 February 2013, with three reasons cited, including that the proposals physically and visually diminish the Southampton - Hedge End/Bursledon/Netley strategic gap, would result in the loss of a site reserved for gypsies and further that the developer's contributions to offset the impact of the development on local infrastructure had not been secured.
- 3.28. The Decision was subject to an Appeal (Ref: APP/W1715/A/13/2194816). In issuing their decision on the appeal the Inspector upheld the views of the LPA in respect of impacts on Gypsy site provision and the strategic gap and the appeal was dismissed.

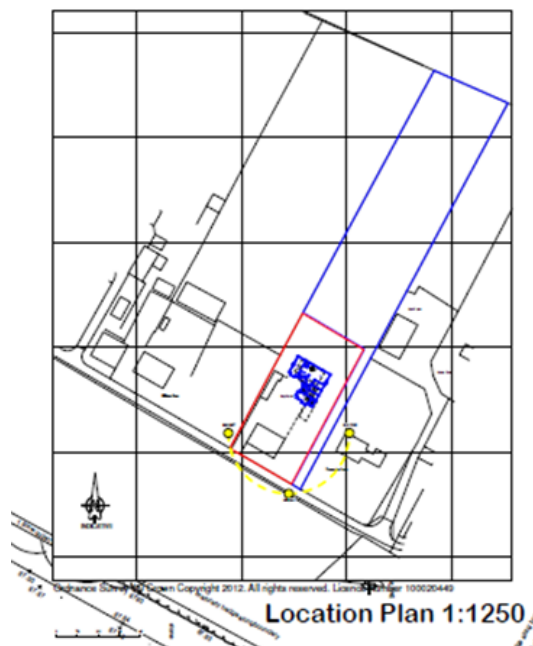


Figure 7: Extract from Location Plan ref. F/13/71899



4. The Proposed Development

- 4.1. The Applicant proposes to site seven static caravans and a touring caravan (that fall within the 1960 Caravan Sites and Control of Development Act (as amended) definition of a caravan) within the application site in question, as identified in red on the Site Location Plan accompanying this application (Ref. Site Location Plan – 001). This land has been defined (under recent CLEUDs, refs. LDC/22/93814 and ref. LDC/24/96868, detailed below) as being a mixed-use site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage and amenity land ancillary to the residential caravan site. Use as a residential caravan site has in part been established through the CLEUDs.
- 4.2. At present the site has three static caravans and three touring caravans in residential use, with residential amenity space, along with further caravans and vehicles stored at the site. With regard to the storage element, it should be noted that the numbers of caravans, motorhomes and boats stored at the site varies during different times of the year, as would be expected, a drop in numbers particularly noticeable during the holiday season when such units are being used for holidaying away from the site.
- 4.3. It is proposed to site 7no. static caravans and 1no. touring caravan on the land within the application site which is an increase from 6 to 8 units (a net increase of 2no. units or 33% in the planning unit), with residential amenity space and also retaining an element of vehicle and caravan storage (albeit at a lesser scale to current – noting that the certificates do not specify the extent of storage, only that this needs to form a component of the mixed use) within the southern half of the site, in line with the authorised mixed use.
- 4.4. The scheme seeks to deliver a high-quality residential living environment with appropriate amenity and with the design complying with Model Standards for a residential caravan site.



5. The Planning Unit

- 5.1. In terms of defining the planning unit, it is necessary to define the relevant unit to which the lawful proposed use relates. The Development Control Practice encyclopaedia provides some useful information with regard to defining a planning unit. It acknowledges that the concept of the planning unit is one that continues to cause considerable practice difficulty, because the courts are insistent that each case is to be considered on its merits as matters of fact and degree. At section 4.324 states:

“The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned, normally the whole of the area in the same ownership or the same occupation. But the consequence of applying that as a universal rule is that the larger the unit of ownership or occupation, the less likely is a change in the use of part of it liable to constitute a material change in the whole.

It is only normally possible to select a smaller unit in the same occupation where there is a functional and physical separation of activity. Both functional and physical separation are required before a smaller unit can be identified, since without functional separation the ancillary link remains and without physical separation there is no smaller physical area which can be identified as a separate unit.

With regard to the subdivision of the planning unit a material change of use does not occur automatically. The primary use of the new units may remain the same as the former primary use of the whole. But the subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change has occurred. In summary a planning unit is the area of land which is to be looked at in order to assess what planning rights apply to all or part of that area.”

- 5.2. Notwithstanding the above, given that the test as to what constitutes the planning unit is not set out or established in legislature or Government guidance, the measures used to define such units have therefore been set by the courts. In *Burdle v Secretary of State for the Environment* and another [1972] 1 WLR 1207, it was held:

“What, then are to be considered the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out broad categories of distinction.

*First, whenever it is possible to recognise a single main purpose of the occupiers use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from *G. Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 WLR 506, where Diplock LJ said at p.513:*



“What is the unit which the local authority are entitled to look at and deal within an enforcement notice for the purposes of determining whether or not there has been a ‘material change in the use of any buildings or land’? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose.”

But secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is ancillary to another. This is well settled in the case of as composite use where the component activities fluctuate in their intensity from time to time, but different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its ancillary activities) ought to be considered as a separate planning unit.

To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisable separate area that they produce a new planning unit of which is material changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller scale unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

- 5.3. Using the Burdle tests and its 'useful working rule' the starting point is whether the site has a single main purpose, and if so, the correct planning unit is the unit of occupation.
- 5.4. In this case, of relevance to the current application site are the two recent CLEUDs issued by the Council in 2023 (ref. LDC/22/93814) and 2024 (LDC/24/96868). The 2023 CLEUD confirms a large proportion of the current application site to be in a mixed-use (purple shaded area shown in Figure 8 below), including an element of residential use, and that this was in itself its own planning unit separate, albeit in the same ownership and physically connected, to the wider Bay Farm site, which includes the applicant's own residence toward the front (southern end) of the site. The 2024 CLEUD subsequently confirms the remainder of the current application site, not covered by the 2023 CLEUD (light blue shaded area shown in Figure 8 below), as being in ancillary use (private amenity land) to the residential use as previously confirmed by the 2023 CLEUD at Bay



Farm, Grange Road, Bursledon, Southampton, SO31 8GD.



Figure 8: LDC Application Boundaries. Image Source: Google Maps

- 5.5. An ancillary use is not a use in its own right, it forms an integral part of the primary use (further confirmed in Burdle which specifically references ancillary uses falling within the same planning unit as the primary use); it therefore follows that the 2024 CLEUD site must be considered to be part of the same planning unit as the wider mixed use site, comprising residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage, confirmed by the 2023 CLEUD.
- 5.6. Having regard to the case of Burdle and its effective working rule, it is considered that while the application site is in the same ownership/control and is physically and operationally connected with the wider use of Bay Farm it is a separate planning unit having a materially different use to the wider Bay Farm site and is considered to be a single composite/mixed use planning unit in its own right.



6. Main Assessment

- 6.1. Within this Section we set out the Applicant's full case with respect to why the LDC should be issued.
- 6.2. Planning permission is only required where the proposed development or use being carried out meets the statutory definition of 'development' as set out in TCPA Section 55. The definition of 'development' includes building operations (e.g. structural alterations, construction, rebuilding, most demolition); material changes of use of land and buildings; and engineering operations (e.g. groundworks).
- 6.3. The question of this application is whether the proposed use ('the stationing of additional residential mobile homes (static caravans) for residential purposes') would amount to 'development' for which planning permission would be required. As caravan sites are a use of land, this would be by way of causing a material change of use. Otherwise, the proposed use is lawful as it does not amount to 'development'.

What is the Site's Primary Use?

- 6.4. In this case, as discussed above, the Council has already issued two CLEUDs which confirms that (while the site is a single planning unit) the use of the land within part of the application site is in a mixed use and part is ancillary use to an element of that mixed-use i.e. private amenity land ancillary to the residential use.
- 6.5. In terms of part of the site's ancillary status, the concept of ancillary uses is largely court led. The principle is covered in a number of cases, most notably *Lydcare v SoS* (13/7/08), *Harrods v SoS* (20/7/01) and *R (I'm Your Man Ltd) v North Somerset and the International Helicopter Museum* (26/2/04) (Appendix 3). Also of particular relevance to this situation is a Glasgow enforcement case (01/04/98) in which a reporter referred to widespread misunderstanding of the word 'ancillary' and therefore found it of use to have regard to its dictionary definition as 'subservient, ministering, auxiliary'. It was also established in *Main v SoS* (22/5/98) (Appendix 4) that ancillary does not necessarily mean 'small'. The land within the application site is already subject to LDCs that confirm that it is a mixed-use site, and the private amenity land use is an ancillary part of the established residential caravan park use.
- 6.6. It has long been held that a good way of testing whether one use is ancillary to another is to apply the 'severability test'. Applying this test, one would ask whether the alleged ancillary use could practically and viably operate on its own where the primary use ceases. If it could, then the use is very unlikely to be ancillary as there is no linkage or dependency. As was accepted by the LPA in consideration and the issuing of the 2024 CLEUD, it is clear that in this case there would be no need to use the land for private amenity land providing leisure and recreation use associated with the residential caravan units and ancillary purposes to the wider authorised mixed use if the residential units/caravan park did not exist. The use is therefore not severable from the primary use.
- 6.7. This circumstance is further substantiated by appeal ref: APP/F1230/X/18/3206065 (White



Horse Park Homes, Weymouth), which related to a CLOPUD application for the siting of caravans on land (Field B) which was confirmed as being recreation and amenity use in association with the adjacent caravan park through a previous CLEUD in 2018. A copy of this decision is attached at Appendix 5. The inspector in the decision letter stated:

"It is now too late to assess whether the use of the field might constitute a 'caravan site' for the purposes of the 1960 Act. Its use as recreation and amenity land has already been established 'in association with the adjacent caravan park' by the 2018 LDC. The matter turns on what the LDC certifies as lawful.

If, as the Council suggests, that the LDC certifies more than an ancillary use then it follows that the recreational use must be a primary use. The Council acknowledged the use must be one or the other. The words of the 2018 LDC are clear on their face that it certifies only the use of field B in association with the adjacent caravan park. In my view it cannot be interrupted as certifying the use of Field B as a primary recreational and amenity use because the use must be 'in association with' the caravan park. This is consistent with an ancillary use where such rights do not continue after the cessation of the primary use. Recreational and amenity are activities that legitimately form part of a caravan site use. The wording of the LDC confirms its functions is that of recreation and amenity land used in association with the caravan park and not some separate and distinct use. In my judgement the only reasonable conclusion that can be reached on the wording of the LDC is that there was a functional relationship between the adjoining caravan site and recreation/amenity land which was ancillary to the primary use of a caravan site. That being so the lawful use of both fields is that of a caravan site."

- 6.8. In this case the existing 2024 CLEUD (ref. LDC/24/96868) specifically states that the northern section of the current application site is being used for purposes ancillary (private amenity land) to the residential use, i.e. the residential caravan park confirmed lawful by the 2023 CLEUD. It therefore must be concluded that the ancillary land proposed in part to accommodate the additional caravans at Bay Farm forms part of the primary use, and it therefore must fall within the same planning unit as the existing residential caravan site. The use of land within the 2024 CLEUD application site is entirely ancillary and therefore forms an integral and physically connected part of a larger caravan site and, in planning terms, is therefore a 'caravan site'.

Legal Background to Material Change of Use Assessments

- 6.9. The basic tests to establish if a material change of use has occurred have been established by a number of court decisions, notably East Barnet UDC v British Transport Commission [1962] and Palsar v Grinling [1948].
- 6.10. The way that this question has been assessed has been clarified by the Court of Appeal in the case: Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited [2012] EWCA Civ 1473 (referred to as the 'Hertfordshire' case) (Appendix 6).
- 6.11. In this case a Council was arguing that a material change of use had been caused by an



intensification in the use of a long-established lawful scrapyards (which has then recently almost doubled its throughput via the introduction of additional equipment).

6.12. At arriving at their unanimous judgment to uphold an earlier decision of the High Court to dismiss the Council's challenge to an Inspector's decision to quash an Enforcement Notice, the Lord Judges confirmed at Paragraph 26 that any planning consequences arising from the proposed development must be seen within the context of a change in the on-site character and that any change must be material. Off-site effects, however great, cannot alone amount to material change of use.

6.13. On change in the character of the use, the High Court states at Paragraph 40:

"Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly...: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land."

6.14. The court considered the extent to which environmental effects can be taken into account in Paragraphs 41 and 42:

"41. I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyards because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land."

"42. The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use."

6.15. It is clear, therefore, that the starting point in considering whether there has been a material change of use must not be the off-site effects. It is deciding whether there is a definable change in the character of the use itself.

6.16. Conversely, this case also examined the extent to which intensification alone can cause a material change of use. Justice Ousley adds at Paragraphs 43 and 44:

"43....Although authorities, in the Court of Appeal for example in Fidler v the First



Secretary of State [2004] EWCA Civ 1295 at paragraph 28, and earlier in, for example, Lilo Blum v the Secretary of State for the Environment [1987] JPL2 78 per Simon Brown J, treat the principle of a material change of use by intensification as well established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred."

"44. In Brooks and Burton Limited v the Secretary of State for the Environment [1977] 1 WLR 1294, Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one."

- 6.17. It is clear therefore that the intensification of a site cannot, of itself, create a material change of use. Neither can its off-site effects on their own. In conclusion on the point of change in the definable character of the use and off-site effects, Justice Ousley states (Paragraph 45):

"...But for all that, the cases have all emphasised the need to identify a material change in the definable character of the use of the land. None of them has suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case."

- 6.18. As such, any planning consequences arising from the proposed development can be considered to be contributing material factors in determining whether any change in the definable character of the use is material. However, if there is no identified change to the on-site character of the use, then the planning consequences, no matter how severe, could not on their own change the definable character of the use. On this basis, it is a pre-condition that there must have been a change in the on-site character of the use for there to be a material change of use. Once it is accepted that there is a change in the definable character of the use, in deciding whether such a change is material, it is relevant to then look at the off-site effects.

- 6.19. The High Court in the Hertfordshire case also provided guidance on how to assess the change in the character of the use.

- 6.20. It states from Paragraph 35:

"In any event, I am not persuaded that the factors she excluded were material considerations, however, the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. A change in the nature of activities on the site, or a change



in the relative proportions of mixed uses on the site may give rise to some material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.

"36. Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as it necessary to constitute a material change of use, the level at which that activity did or could occur without giving rise to a material change of use has to be ascertained. It is only what happens above that no doubt not very clearly defined baseline which can contribute to the material change of use. In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.

"37. I do not doubt that a combination of intensification and other changes in activities can constitute a material change of use; but what could be done without the need for permission would still have to be ascertained... So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities beyond those which did not require planning permission."

- 6.21. It is clear that any potential effects which do not need planning permission but would also be lawful must be discounted from the assessment of the change in on-site character as being 'permitted effects'.
- 6.22. In addition, *Reed v SOS* [2014] (hereafter referred to as the 'Reed case') (Appendix 7) takes the Hertfordshire principles and relates them to a caravan site. In particular, in Paragraph 21, the Court of Appeal confirmed that although intensification of the use can point towards a change of use, if there has been no change to the definable character of the land, then it would be difficult to argue a change of use has taken place. The Reed case related to an enforcement notice which alleged a change of use from mixed use equestrian purposes and the stationing of one static mobile home and one touring caravan to mixed use for equestrian purpose and stationing of two static mobile homes, touring caravans and one storage container had occurred.
- 6.23. In the judgement, the Court of Appeal was clear that it is the character of the use of the land which must be assessed. The use of the land was mixed use for a caravan site and another use (and so similar to the current application). It remained as such, according to the Court of Appeal, despite the increase in the number of caravans. Indeed, it is clear that a caravan site with four caravans would be the same as with two caravans: it remained a caravan site.
- 6.24. Appeal cases have also looked at the question of whether intensification of the use of a site can generate a material change of use. Relevant cases for the current proposal including those at The Smithy, Brigdnorth (Appeal Ref: APP/J3205/X/09/2099134; Appendix 8) Greenacres, Suffolk (Appeal Ref: APP/W3520/X/07/2039698, Appendix 9); Cannisland Park, Swansea (Appeal Ref: APP/B6855/X/18/3213425, Appendix 10); Park Hill Caravan Park, Ipplepen (Appeal Ref: APP/PI133/X/23/3320991, Appendix 11) and Little Venice Country Park and Marina, Yalding (Appeal Ref: APP/U2235/X/22/3300066, Appendix 12).
- 6.25. When looking at the Smithy decision, it can be summarised that the application sought the use as a residential caravan site accommodating 6no. caravans. The existing caravan



site had a planning permission for one mobile home. The proposal sought to increase the number by 5no. units (600%). In Paragraph 14, the Inspector quotes the key line from the case referred to as Lilo Blum 1986, and this confirms that:

“a proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use.”

- 6.26. At Paragraph 15, the Inspector noted that the mobile home on site is visually prominent and highlights that what is permitted is a ‘caravan site’, although what exists is a low-key site. Following on, at Paragraph 16, the Inspector indicated that with the increase in units, the site would change, in that there would be more hard surfacing, activity, traffic and paraphernalia, but then concludes:

“But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site and, in my view, that is the character it would have with the additional caravans there... It would simply be more of the same use.”

- 6.27. Under Greenacres Park (Appendix 9), the application sought an increase in the number of caravans on a lawful caravan site from 6no. to 12no (100% increase). At Paragraph 3 the Inspector referred to the Brooks and Burton 1977 case and held that in assessing whether there was a material change of use, account had to be taken of the existing character of use, including consideration for the planning consequences and environmental impact of a particular use. The Inspector emphasised the change must be material as a matter of fact and degree for there to be a material change of use.

- 6.28. In line with Hertfordshire and Reed, it is first necessary to decide if there will be a change in the character of the use of the land. If there will not be a change in the character of the use, then there is no need to assess if that change would be material. If there is a change in the character of the use, then we would need to consider whether that generates a material change of use. As part of that exercise, we can consider the extent to which off-site effects could contribute to there being a material change of use.

- 6.29. The Cannisland APP/B6855/X/18/3213425 (2019) appeal (Appendix 10) involved the stationing of 15 additional caravans on land that benefitted from a CLEUD for recreation use ancillary to the caravan site. In the case of Cannisland Park, the Inspector concluded (Paragraph 11) that:

“Indeed, the development would not result in materially different planning circumstances to that currently, or potentially, found at Cannisland Park and, as a matter of fact and degree, the development would not result in such a change to the definable character of the use or area that it would result in a material change of use. In coming to this conclusion I have had full regard to the impact of the development on other uses and premises, including those relating to amenity and traffic. I am also satisfied that such a finding is consistent with the principles established in the judgements referred within the evidence, including the Reed,



Metal and Waste Recycling and Childs cases"

- 6.30. Of note in the Cannisland case is that the LPA also accepted this principle, being agreed common ground, that there would be no material change of use (Para. 11).
- 6.31. Of further relevance to this current application is that the positive Cannisland appeal decision resulted in an increase in the total number of caravans from 45 to 60, which is the same 33% increase in the total number of caravans as proposed in the current application.
- 6.32. Similar to Cannisland, the Park Hill appeal (Appendix 11) involved the stationing of 15 additional static caravans (an increase from 40 statics to 55) on land that benefitted from a CLEUD for recreational and amenity areas ancillary to the wider caravan park. In the case of Park Hill, the Inspector first grappled with the question of what constituted the planning unit; concluding that recreational and amenity areas formed part of what was 'a single planning unit', stating (Para. 26):

"...as at the time of the 2020 LDC a single planning unit in use as a holiday caravan site, that being the primary use and with ancillary activities taking place across that unit".

- 6.33. Turning to the question as to whether the proposals would result in a material change in the use, the Inspector considers the context of the site and potential impacts of the proposed use, concluding at Para. 53 that:

"As a matter of fact and degree, I therefore consider that the proposed 55 static caravans would not cause a material change in the definable character of the land if occupied for holiday purposes on the holiday caravan site. As such, use of the site overall for 110 touring and 55 static caravans would not involve a material change of use of the appeal site and would be lawful".

- 6.34. The Little Venice Country Park (LVCP) appeal (Appendix 12) again relates to the lawfulness of the proposed stationing of additional caravans (in this instance 10no. caravans for holiday use) on land confirmed as being ancillary land (by way of an LDC issued by the LPA) to the long-established static caravan park with a marina and riverside moorings.
- 6.35. In allowing the LVCP appeal the Inspector again considered the site to represent a single planning unit, albeit being in a mixed-use, (Para. 28) and that ancillary recreational land used in connection with LVCP formed part of the caravan site and marina (Para. 34).
- 6.36. In consideration of whether the proposals would result in a material change in the use the Inspector, as in the appeals discussed above, similarly concludes (Paras. 37 & 38) that "the proposal would not result in a material change of use".

37. The majority of the site is used to station 120 static caravans. Whether all or some are used for permanent residential purposes, as opposed to seasonal holiday purposes, does not fall to be considered. It goes without saying that caravan sites vary in their appearance and the matters taken into account by the Council do not necessarily indicate permanent residential use is taking place. Indeed, when asked, the Council confirmed it had no evidence to contradict the appellant's statement on the matter.

6 What is relevant to an assessment of the



character of the site are the features and qualities that make the place different from others.

38. To that end it is the number and disposition of the caravans and to a lesser extent the incidentals that accompany the stationing of caravans that define the character of the use of the site. That character is also derived from the mooring of boats in the marina and alongside the River Medway. Against this finding, the proposed development would not change that character as the site would continue to be used to station caravans and to moor boats. As such, the proposal would not result in a material change of use.

- 6.37. The above appeal decisions demonstrate consistent approach made by Inspectors concluding that a net increase in the number of caravans on a site and an intensification of the use is deemed alone not to result in such a change to the definable character of the use that a material change of use would result.
- 6.38. Also of note is King's Copse Park, Oxfordshire, where an Inspector's decision (Ref: APP/Q3115/X/19/3240630) was overturned by the High Court Order (Ref CO/281/2021). In this case an Inspector dismissed an Appeal for the proposed stationing of 145 caravans in place of 116 caravans on the basis that the increase would cause a material change of use. The LPA (South Oxfordshire District Council) subsequently issued an LDC to confirm that it was lawful to station 145 static caravans in place of 129 caravans (which was then the increased baseline, as the Appellant already obtained an LDC confirming an increase from 116 to 129 static caravans was lawful whilst waiting for the Appeal to be determined). Copies of the relevant LDCs are enclosed in Appendix 13.

Summary of Case Law Regarding Material Change of Use

- 6.39. The courts have held that a material change of use can only occur where there would be both a change to the definable character of the use of the site, and a recognition that this change is material. Off-site effects may be considered when assessing whether the change is material, but off-site effects do not form part of the consideration of whether there is a change in the character of the use. Mere intensification cannot itself amount to a material change of use.
- 6.40. Finally, recent appeal cases indicate that an increase in the number of caravans within an established caravan site are unlikely to cause a change to the definable character and if any change occurs, it is not material. This includes a 33% uplift in the number units as confirmed in Cannisland, the same percentage increase as proposed with this current application, and a much higher percentage at the other smaller sites. It is therefore concluded that an increase in caravans within the site is unlikely to cause a material change of use which requires planning permission.

Would the Proposal result in a change in Character of the Use of the Site?

- 6.41. The Oxford English Dictionary defines 'character' as "The distinctive nature of something" and makes reference to the phrase 'in character' as "In keeping with someone's usual



pattern of behaviour and motives”.

- 6.42. On this basis, it can be said that, for a use of land to change its character, the ‘distinctive nature’ of the use, as well as its ‘pattern of behaviour’, would need to materially change, when compared to the lawful use of the land.
- 6.43. The current use of the planning unit is a mixed-use site with residential caravan site with ancillary private amenity land and caravan and vehicle storage.
- 6.44. The proposed use seeks to retain the mixed-use as it currently stands, albeit installing 4no. additional static caravans and reduce the number of touring caravans to 1no. touring caravan, a net increase of 2no. caravans within the site. The proposed residential caravan site with associated private amenity space would comprise land within both the 2023 and 2024 CLEUD site areas; while proposed caravan and vehicle storage would continue in the southern half of the site covered by the 2023 CLEUD, albeit on a reduced scale. A layout can be achieved that will adhere to model standards for caravan site licensing purposes.
- 6.45. In this scenario, the use of the land would remain the same. Its definable character would not change as the form of change is ‘mere intensification’. This is best described in the Reed case (as referred to above) states:

“A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal.”

- 6.46. Setting aside the caravan and vehicle storage, the principle of which will remain unchanged with the proposals, it is our position that the proposal is simply introducing some additional caravans onto the land, and this would form ‘mere intensification’ without materially changing the definable character of the use. As established above, the definition of a caravan site is “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”. Under this proposal the use of the land would remain as a caravan site within this statutory definition.
- 6.47. A caravan site with 8no. caravans instead of 6 is still a caravan site, and the use would therefore not have a different character. This was confirmed by the Court of Appeal at Reed.
- 6.48. There are no planning conditions controlling the number of caravans that can be sited on the application site. The above cases confirm that mere intensification of itself is not enough to trigger a material change of use if it does not change the definable ‘character’ of the use. In this case the definable ‘character’ of the use remains a mixed-use residential caravan site and caravan and vehicle storage.
- 6.49. In line with the Hertfordshire and Reed cases, no further assessment of off-site effects is necessary, because if the character of the use is the same then any changes to off-site effects cannot alone be material nor change the definable character of the use of the specific parcel of land. The proposed use is therefore lawful, and the certificate should be issued.



6.50. Without prejudice to this, we have however provided a brief review below.

Would the Proposal Effect Neighbouring Uses and the Locality?

6.51. The Hertfordshire case established that only when there is an identifiable change in the character of the use can the external effects of the proposal be assessed to assist with determining if that change is material. Whilst we have already established that there would be no change in the character of the use of application site, for completeness we consider external impacts and neighbouring uses. We are assessing here whether the net increase of 2no. caravans would have different off-site impacts.

Neighbourhood Amenity

6.52. The nature of the use of the site would not change as a result of the proposals. It would remain a mixed-use site, the effect on neighbouring amenity would therefore remain unaffected by the proposed use. Site licensing requirements would mean that the proposed caravans would remain at appropriate distances from neighbouring property boundaries, and thereby their privacy and amenity would be unaffected by the increased occupation of the application site for 2no. additional caravans, and the context of neighbouring amenity would be retained as is.

Visual Amenity and Landscape

6.53. With regards to landscape, there would be no material changes in levels, boundary treatment or on site to a degree which would increase the impact of the site on the local or wider landscape in any material way.

6.54. When viewed from off-site, an increase of 2no. units would be noticeable in only a very small way. Any views would be seen in the context of the wider caravan site and adjacent commercial uses. In addition, increasing the number of occupied caravans would be likely to decrease the storage element of the use, which means that the effect is likely to be neutral.

6.55. It would present no material change to the character and appearance of the site and wider area. Thus, the proposed use of the site would not result in material off-site impacts regarding visual amenity and landscape.

Traffic

6.56. Whilst the site is relatively remote and in a countryside location, it is accessed via private road from the adopted Grange Road west of the site which has sufficient capacity. We are not aware of any traffic or transport problems that would be unacceptably exacerbated by the mere addition of 2no. caravans that would result in a material change of use. Indeed, there would likely be a decrease in the number of vehicle movements to and from the site through the reduction of caravan and vehicle storage, with less customers going to and from the site in relation to their stored caravans and vehicles.

6.57. In the Hertfordshire case, a large increase in lorries accessing that site was considered, and it was held that any increase in off-site noise from the increased passage of lorries



did not mean there had been a material change of use of the land. Such an approach is also in line with the Inspector's findings under the Greenacres Park appeal. Therefore, it is apparent that matters of traffic are unlikely to be material in planning terms, as existing or proposed.



7. Conclusion

- 7.1. In overall conclusion, this CLOPUD application seeks to establish the lawful principle of for a mixed-use site comprising a residential caravan site with private amenity land and caravan and vehicle storage (as existing), including the stationing of 7no. residential static caravans/mobile homes and 1no. residential touring caravan (an increase of 33% on existing occupancy) at Bay Farm, without the need to obtain planning permission.
- 7.2. The application site currently benefits from two CLEUDs for two parts of the site Ref. LDC/22/93814 (2023 CLEUD) for:
- "Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage"*
- 7.3. And LDC/24/96868 (2024 CLEUD) for:
- "Private amenity land ancillary to the residential use of land shown on the plan attached edged red"*
- 7.4. There are no other LDCs or planning permissions applicable to the application site, nor have/are there any enforcement actions being taken. Because the application site is operating solely under an LDC, with no planning permissions relating to the land, there are no conditions applying to the site.
- 7.5. The two CLEUDs relate to a single planning unit within Bay Farm and confirm the lawful use of the land within part of the application site is in a mixed use and part is ancillary use to an element of that mixed-use i.e. private amenity land ancillary to the residential use.
- 7.6. The question for the Local Planning Authority is therefore, does the proposal amount to a material change of use? The process for examining this is prescribed in binding case law from the Court of Appeal and the High Court and for there to be a material change of use, there must be a change in the character of the use itself.
- 7.7. Case law examines that intensification alone cannot cause a material change of use. Where there is no identified change to the on-site character of the use then there cannot be a material change of use.
- 7.8. The current use of the whole planning unit is a mixed-use site (residential caravan site and caravan and vehicle storage) occupying 3no. mobile homes and 3no. tourers, with ancillary amenity areas and areas of storage. This proposal is essentially for an additional 2no. caravans that would bring the total maximum number of caravans in the planning unit to 8no., an increase of 33%. In the Reed case (2004), the Court of Appeal overturned a High Court Decision, to allow a doubling of the number of units, which confirmed that such would not be a material change of use. As such, the proposed increase of 33% would equally not have an impact on the definable character of the use. Other relevant cases include the Cannisland Park, Smithy and Greenacres appeals.
- 7.9. In summary, the existing use of the site is a mixed-use site (residential caravan site and caravan and vehicle storage). As there would be no change in the definable character of the use as a result of the proposal, there cannot not be a material change of use. The



proposal therefore does not constitute development, and the certificate may be issued.



Appendixes



Appendix 1: LDC/22/93814 – Decision Notice & Officer Report





**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)**

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE)
(ENGLAND) ORDER 2015: ARTICLE 39**

CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT

Application number: LDC/22/93814

Eastleigh Borough Council hereby certify that on 9th September 2022 the use described in the First Schedule to this Certificate relating to the land specified in the Second Schedule to this Certificate edged red on the plan attached to this Certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

The Council is satisfied based on the information submitted that the use described in the First Schedule relating to the land described under the Second Schedule is lawful as it has been in continuous use in excess of ten years.

Signed:  (Council's Authorised Officer)
Helen Devereux
Head of Legal Services
On behalf of Eastleigh Borough Council

Date: 29th August 2023

FIRST SCHEDULE

Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage

SECOND SCHEDULE

Bay Farm, Grange Road, Bursledon, Southampton, SO31 8GD

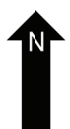
Notes

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

Site Location Plan - Revision A



0 50
Metres



Plan Produced for: Bay Farm
Date Produced: 24 Feb 2022
Plan Reference Number / Project ID: TQRQM22055133300923 / LPL1135
Scale: 1:1250 @ A4

Land to which this relates Bay Farm, Grange Road, Bursledon

The application is for “mixed use residential caravan site, roofing contractor, caravan storage and vehicle storage”

The red line goes round the land behind Bay Farm and does not include the front site which was originally granted permission for the stationing of a mobile home for a gypsy site.

The evidence submitted with the claim alleges that the occupants in the application site do not identify as gypsies or have a nomadic lifestyle.

Mr Kempster who lives in the mobile home at the front of the site outside of the red line identifies himself as a gypsy, his wife (the applicant) and children and grandchildren that live within the application site do not and neither do the other occupants of the site with the red line of the application.

The applicant asserts that the 2012 permission F/10/66559 continues to operate in the blue land. In the red land a materially different land use has taken place for more than 10 years.

The applicant claims that there is also caravan storage taking place at the site, and that the use has fluctuated over the years but has been continuous and that it varies between summer and winter but there have been up to 60 caravans on site. There have been no invoices/receipts or proof of customers provided for this activity.

The applicant states that the persons living in the mobile home are

The Lodge - Mobile Home B – occupied by Kelly Kempster, the applicant’s daughter and she does not identify as a gypsy, also in his unit is Kelly’s partner and two children.- Kelly Kempster was named in the planning condition.

Safe Haven - Mobile Home C – is occupied by Fern Harris who purchased it from Paul and Julia Franklin in 2014, she doesn’t identify as a gypsy – Paul and Julia Franklin were named in the planning condition.

Grange Stables - Mobile Home D – Was occupied by Lynn Brinley who passed away but prior to this was occupied by Janie Kempster who was named in the planning condition.

Council Tax records and Elections show that these occupants lived in the mobile homes on the site either currently or previously as do the Statutory Declarations provided to support the application.

Evidence

5th April 2022 – EBC planning history for the site

13th September 2012 – Caravan site licence for planning permission Z/35996/001 and F/10/66559 – for 4 residential caravans and space for parking 4 touring caravans (this includes the Bay Farm pitch)

02/04/21 – aerial photo of site – showing the rear field clear of items

03/03/13 – aerial photo of site – showing the rear field clear of items

15/04/14 – aerial photo of site – showing the rear field clear of items

22/04/15 – aerial photo of site – showing the rear field clear of items

21/06/17 – aerial photo of site – showing the rear field clear of items

06/07/18 – aerial photo of site – showing the rear field clear of items

15/09/19 – aerial photo of site – showing an increase in hardstanding on the amenity land and increase of vehicles and touring caravans

26/05/20 – aerial photo of site – showing hardstanding and vehicles and touring caravans

18/07/21 – aerial photo of site – hardstanding now covering most of the rear field and increase in number of vehicles and caravans

2022 – aerial photo of site – hardstanding

Statutory Declarations

SAFE HAVEN

Julia Franklin of 7 Sylvan Lane used to live in Safe Haven

Lived in mobile home Safe Haven for 4 years from 2011 to 2015, does not identify as a gypsy or a person with a nomadic lifestyle

Julia Franklin states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned

Fern Harris of Safe Haven,

Fern Harris does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 8 years from March 2015.

Fern Harris states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

GRANGE STABLES

Janie Kempster of Hilvenor, Victoria Road, Netley Abbey lived in Grange Stables

Janie Kempster does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 10 years from 2009 to 2019.

Janie Kempster states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

Linda Brindley (deceased lived in Grange Stables)

Linda Brindley (deceased) did not identify as a gypsy or a person with a nomadic lifestyle and moved onto the site in 2019 and passed away in October 2020

Linda Brindley daughter in law states in email that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

THE LODGE

Kelly Kempster of The Lodge, Bay Farm

Kelly Kempster does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 3 years from 2020 to current.

Kelly Kempster states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

Applicant Stat Dec

Deborah Kempster of Bay Farm

Have lived and operated the site with husband for 24 years.

The grassed area of land at the rear of the site, when not in use for storage has also been used for leisure and recreation by my family and other people living on the site and for exercising dogs.

The number of caravans on site has fluctuated over the years and varies between summer and winter months and has been up to 60 caravans stored out of camping season.

The mobile homes have been continuously occupied over the ten years.

There are four people living on the site but there have been up to 6 or 7 people living on site within caravans, none of these people identify as gypsies.

Since purchasing the site in 1989, storage space has been provided for vehicles including boats, cars and vans. Levels of storage has gradually increased over the years.

Mark Kempster of Bay Farm

Have lived on site for 24 years.

The land has been used continuously for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage since 2009. The grassed area of land at the rear of the site, when not in use for storage is used for leisure and recreation including dog exercising by family and other people living on the site.

The number of caravans on site has fluctuated over the years and varies between summer and winter months and has been up to 60 caravans stored out of camping season.

The mobile homes have been continuously occupied over the ten years.

There are four people living on the site but there have been up to 6 or 7 people living on site within caravans, none of these people identify as gypsies.

Since purchasing the site in 1989, storage space has been provided for vehicles including boats, cars and vans. Levels of storage has gradually increased over the years.

Touring Caravans

Daniel Jackman

Has lived in a caravan at Bay Farm for 12 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been 5 or 6 other people living on site over the last ten years.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022.

Ian Andrew Hodges

Has lived in a caravan at Bay Farm for 15 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been 5 or 6 other people living on site over the last ten years.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022

He pays rent to Mark and Debbie Kempster who have run the site since taking over from the previous owners.

Simon Venn –

Has lived in a caravan at Bay Farm for 16 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been at least 4 other people living on site.

Towards the back of the site there is an area of land that when not used for vehicle and caravan storage is used for recreation, including dog walking by people living on the site.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022

Stuart Hopkins – lived on the site for 11 years before passing away.

Email statement by Kim Lewis

Confirm that for more than 15 years have been a regular taxi driver for Kempster Family at Bay Farm and pick up for nights out and have picked up others that occupy caravans on Mark and Debbie's land and take them back to their caravans.

Statement of Philip Cullins of Abbey Ashpalt Roofing Ltd

Director of Abbey Ashpalt Roofing Ltd company was founded in 2009 and since that date the yard was at the rear of Bay Farm. There has always been people living in caravans on the land just up from the yard.

Roofing Contractors business

There are no signs of a roofing business run from the application site, there was a pile of builders tiles which Mr Kempster said were his. The roofing business Abbey Ashpalt Roofing Ltd has moved to the front of the property and outside of the application site.

Google earth

April 2012 – approx. 20 caravans on site, nothing on rear field

April 2014 – approx. 16 caravans on site, nothing on rear field

Sept 2014 – approx. 17 caravans on site, nothing on rear field

April 2015 – approx. 16 caravans on site, nothing on rear field

Sept 2015 – approx. 15 caravans on site, nothing on rear field

May 2017 – approx. 11 caravans on site, nothing on rear field

July 2018 – approx. 15 caravans on site, nothing on rear field

Sept 2019 – approx. 32 caravans on site, signs of storage in rear field

April 2020 – approx. 41 caravans on site, intensification of storage in rear field

May 2020 – approx. 42 caravans on site, intensification of storage on rear field

July 2021 – approx. 39 caravans on site, intensification of storage on rear field

January 2023 – approx. 27 caravans on site,

Planning permission

The planning permission was granted on 15 February 2012 retrospectively for ‘change of use of land to gypsy caravan site accommodating 3no. mobile homes, 3no. touring caravans and 3 day rooms’

Conditions

2) the mobile homes hereby permitted shall not be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn and Mr Paul Franklyn. Reason: The application has been approved due to the exceptional circumstances of the applicant.

4) the site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006. Reason: This permission has been granted due to the exceptional circumstances of the applicant.

5) no more than three mobile homes and three caravans kept for touring shall be stationed on the land at any one time. Reason: To protect the character of the area.

Conclusion

The use of the rear field for the storage of caravans seems to have started around July 2019 and increased from there. It is not clear the terms of the storage, no receipts or invoices have been provided or stat decs from customers for the storage of the caravans on site.

The storage of motor vehicle seem to be part of Mr Kempsters incidental use of the site, there has been no evidence produced to show that they are stored for customers or that they are sold from there.

The relevant test is whether on the balance of probabilities, that the evidence submitted by the applicant is sufficient to demonstrate that the use existed for a continuous period of 10 years over the whole land.

Taking all the evidence and considering it alongside the Council's internal records and the aerial photos there is insufficient evidence to support the use alleged in the application of a "mixed use residential caravan site, roofing contractor, caravan storage and vehicle storage" in excess of ten years. I therefore recommend that the application is refused.

The Council has considered the aerial photos and can see that the rear field has not been used for storage of caravans and that it seems that from 2019 onwards it increased and expanded onto that area.

In respect of the roofing storage this has now moved onto the front of the site and the items that were on site Mr Kempster said was his.

Following conversations with the Agent it has been agreed to reduce the red line of the site to omit the rear field and the description to "Mixed Use Site – Residential caravan site and caravan and vehicle storage"

Appendix 2: LDC/24/96868 – Decision Notice & Officer Report





**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)**

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE)
(ENGLAND) ORDER 2015: ARTICLE 39**

CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT

Application number: LDC/24/96868

Eastleigh Borough Council hereby certify that on 9 February 2024 the use described in the First Schedule to this Certificate relating to the land specified in the Second Schedule to this Certificate edged red on the plan attached to this Certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

The Council is satisfied based on the information submitted that the use described in the First Schedule relating to the land described under Second Schedule is lawful and is therefore immune from enforcement action for use under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Signed:

A handwritten signature in black ink, appearing to read "Nicola Moorhouse".

(Council's Authorised Officer)

Nicola Moorhouse FCILEx
Head of Legal Services (Acting)
On behalf of Eastleigh Borough Council

Date: 1 July 2024

FIRST SCHEDULE

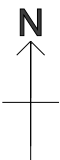
**Private amenity land ancillary to the residential use of land shown on the plan
attached edged red**

SECOND SCHEDULE

Bay Farm, Grange Road, Bursledon, Southampton, SO31 8GD

Notes

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and therefore was not liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.



This application for a Certificate for Existing Lawful Use/ Development for Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD. This application is for use of the land for purposes ancillary to the existing authorised mixed use comprising residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage site at Bay Farm.

The grounds for the application are that the use began more than 10 years before the date of this application.

Planners are of the opinion that there is evidence to show an ancillary residential use but not mixed use of residential and commercial.

The planning Agent for the Applicant has provided a detailed file containing a cover letter, application form and a planning statement (including planning history for the site, case law, statutory declarations, photos and plans).

Evidence

Statutory declarations

Statutory declaration from Deborah Kempster, dated 6 February 2024

States that she is the owner of Bay Farm, having owned the site since 1989. She has operated the site with her husband, Mark Kempster for 25 and a half years. They live in a static caravan towards the south western side of the site.

States that the rear field has been an integral part of the wider Bay Farm site, during all of the time that she has owned the site. It has always been freely accessible throughout her time of owning and living on the site with no physical barriers between the residential caravan site and the rear field. The area has been used as an ancillary space associated with the Bay Farm site and available to people using the wider Bay Farm site.

The field was previously used for strawberry growing until around 1998. After that point, her husband would pull up the poly hoops along with help from their daughter Janie. She also brought a friend from school to help.

Her daughter Janie had a quad bike to play on in the open space in the rear field. Before the field was flattened, she enjoyed driving over the bumps. Around 2011 they employed Rubin Mitchell to put post rails around the whole site.

One of their neighbours, Tom Waite (now deceased), from Ridge Farm would cut the grass in the field. The children and friends enjoyed taking turns on the tractor. Now, Ian Hodges and Dan Jackman (who live within the site), cut the grass and trim brambles. The fences and field are maintained by Ian, Dan and Simon Venn who lives at the Bay Farm site.

Over years, they have used the rear field for family picnics, play games, football, rounders, barbeques and enjoyed firework nights there, inviting friends and family over. Her daughters have used the field for their children to play in and hold family gatherings (eg birthday parties).

She keeps dogs as a licenced breeder and has used the field on a daily basis for walking and exercising her dogs.

When they started to store caravans, people would still use the rear field for dog walking/exercising.

Ian Hodges was one of the first people to live in a touring caravan, arriving around 2007. He had separated from his wife and three young children. He was able to have his children stay whenever. He lived in a small caravan, so he erected a tent in the rear field for his children to stay in. His children enjoyed their time with their Dad, playing in the rear field, flying kites and having picnics. Also, they would come over for the fireworks display. As they got older, they would bring friends over to play football in the rear field.

Her daughter Janie moved to Grange stables in 2009, where she had her own family. Janie brought up her children enjoying the rear field as a safe play space for parties, picnics etc. She would let them enjoy their freedom. Janie also has her own dog business and would use the rear field for exercising her dogs, up until she moved out in 2019.

Her daughter Kelly still lives on the Bay Farm site to date. She has her own young family who do use the rear field most days to play in (kicking footballs, flying kites and walking and playing with dogs in the field).

As the storage of caravans business grew over years, she would allow people to go into the rear field to air out their awnings. The number of caravans stored on the site varies between the summer and winter months with more caravans being stored when out of camping season. While the caravan storage has increased over recent years, the rear field is still used for recreational purposes (dog walking, exercising and as a place for children to play).

Statutory declaration from Mark Kempster, dated 6 February 2024

He is the husband of Deborah Kempster and father to Janie and Kelly Kempster. He has lived and operated on the site with his wife for 25 and a half years. They live in a static caravan at the front of the site.

The rear field has been an integral part of the wider Bay Farm site, a mixed use site comprising of residential caravan site, caravan storage and vehicle storage.

There have been many changes to the site over years. His wife has been responsible for running the site and her statutory declaration is accurate against what his recollections of the site use have been.

Statutory declaration from Kelly Kempster, dated 6 February 2024

She is the daughter of Mark and Debbie Kempster, having lived at Bay Farm since 1998 when she was 7 months old. She lives at the Lodge, on the site. She has extensive knowledge of the site. States that the rear field has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed use site comprising of residential caravan site, caravan storage and vehicle storage during all of the time she has lived on the site.

State that she would regularly play in the rear field with her sister Janie Kempster and cousin, John Blake. They would ride quad bikes around the field. Every year they would have a fireworks display which friends would be invited to.

States that she was friends with Ian Hodge's (lives on touring caravan at Bay Farm) daughter Megan. Her two brothers would also come to play. The rear field was a great open space and safe place for use to play.

States she had a dog at Bay Farm and would walk and play with Sadie in the rear field. Teaching her new tricks and playing fetch. She has a dog currently that like to play fetch in the rear field.

Tony Waite who lived at Ridge Farm would cut the grass.

In the summer family would come over (nans, aunts, uncles, cousins) and the rear field was used for family gatherings such as picnics and BBQs, and games of rounders. She would walk her dog with her Nan's dog in the rear field.

States that when her sister, Janie, had her children they also used the field for picnics and playing in and riding their bikes. Her sister had birthday parties and a bouncy castle in the rear field.

Says she has children of her own and takes them most days to the rear field to play, kick footballs about, fly kites and walk the dogs.

Statutory declaration from Janie Kempster, dated 6 February 2024

States that she previously lived with her parents and sister at Bay Farm. Confirms they have lived there for 25 and a half years.

She moved to Bay Farm (Grange Stables) when her eldest son was born. She moved onto her own static caravan (Grange Stables) in 2009 and moved out in 2019.

Says that the rear field was freely accessible throughout her 21 years of living on site and there was no physical barriers to access between the residential caravan site and the rear field which has always been used as an ancillary space associated with the Bay Farm site.

The field was regularly used to play in and she had a pony for her birthday when she as 10-11 years old and would regularly ride it around the rear field. She would also ride her quad bike with cousins in the field.

The field was regularly used for family gatherings, parties, picnics, fireworks displays and BBQs. Her children also used the field to play in, hold their parties, walk ponies and ride on their quad bikes. She has held birthday parties for her children having a bouncy castle and other children's entertainment in the rear field.

States she would use the field to exercise dogs twice a day from her dog business.

Statutory declaration from Daniel Jackman, dated 6th February 2024

States that he has been resident of Bay Farm for 13 and a half years having lived within a touring caravan at the Bay Farm site. The caravan has been his main residence throughout the period that he has been on the site.

The rear field has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site.

The rear field has been freely accessible throughout his 13 and a half years living on the site with no physical barriers between the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.

He has had involvement in the upkeep of the rear field, including maintenance of the boundary fencing and controlling growth of brambles from the neighbouring site, which causes a problem every year. He continues to maintain the site as necessary.

States that Tony Waite of Ridge Farm, used to regularly cut the grass within the rear field.

He confirms that the rear field was used for ancillary residential purposes including as an area of play for the kids living there, parties, BBQs, dog walking and exercising and annual fireworks displays.

Since 2019, the rear field has also been used at times by people storing vehicles and caravans associated with the wider authorised Bay Farm mixed use site. Often caravans, motor homes and boats will be removed from the Bay Farm site during the summer months and returned at the end of the camping season.

Statutory declaration from Ian Hodges, dated 6th February 2024

States that he has lived on the site for approximately 16 and a half years. The rear field has been an integral part of the wider Bay Farm site used continuously for purposes ancillary to the wider Bay Farm site.

He has had many roles at Bay Farm, to include, grass cutting, general maintenance and tidying. Doing the general maintenance helps him pay his way.

Before he moved to Bay Farm, he was previously married with 3 small children, until getting divorced in 2003. Mrs Kempster would allow him to have his children stay with him.

He would camp out in the rear field in a tent and have BBQs/entertain. His children would come over at weekends/summer holidays and play with older children in the rear field. His grandchildren now come to visit.

He stated there would be a fireworks display every year with a BBQ.

He has met many friends on Bay Farm, to include others living on site and meeting others storing their caravans and vehicles at Bay Farm and walking their dog in the rear field.

Statutory declaration from June Paul, dated 6th February 2024

States she is the mother of Deborah Kempster.

Her daughter moved to the site in 1998 and she would regularly visit them. She has spent a lot of time at Bay Farm since 1998 and has a good knowledge of the site and its use. The rear field has been an integral part of the wider Bay Farm site. The rear field has always freely been accessible throughout the time she has known the site.

Herself and her husband have spent many hours enjoying the open space flying kites in the rear field with their eldest granddaughter and watching her go around on her quad bike. Her son John and his eldest son would also enjoy this, particularly on Sundays as they would go round for Sunday roasts. Over the years, she has enjoyed walking dogs with her granddaughter in the rear field and would also bring her own dogs for walks.

Confirms she has seen children playing and people walking and exercising their dogs. There have been many BBQs in the rear field and Debbie would also have a yearly fireworks display inviting family and friends.

Statutory declaration from Sharon Martin dated 6th February 2024

She is the grandparent of Janie Kempster's children and mother in law to Janie. In 2009 her eldest grandchild was born and they lived at Grange Stables behind Janie's parent's home.

She visited regularly and baby sat for Janie whilst she exercised her dogs in the rear field. She had a great view of the field from Janie's house and recalls seeing others walking their dogs across the field and also seeing people race their bikes in the field.

She attended fireworks displays and BBQs in the rear field. Janie would have the boy's birthday parties in the rear field and they would love running around and playing. Her son would spend hours pushing the boys around the field on their toy tractors.

Confirms that when she visited the site, it would not be unusual to see grass being cut, fences being painted, kids on trampolines, quad bikes being ridden and tents on the field.

Statutory declaration from Fern Harris dated 6th February 2024

She has been a resident of Bay Farm for 8 and ¾ years since March 2015 and lives on a static caravan known as Safe Haven with her two youngest children and dog. The caravan is her sole main residence.

Confirms there are no physical barriers between the access from the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.

She would walk her dog everyday in the rear field both in the morning and every evening. She would regularly meet other dog walkers along the way.

Fireworks displays and BBQs were held in the rear field.

The application site was used by other residents of the Bay Farm site for ancillary residential purposes including as an area of play for the children living on site, parties, BBQs dog walks and exercising and annual fireworks displays.

From 2019, the rear field has also been used at times by people storing vehicles and caravans associated with the wider authorised Bay Farm mixed use site.

Statutory declaration from Carter Harris dated 6th February 2024

Lived at the site between March 2015 -2020 as his main residence.

Rear field was freely accessible throughout his time living on the site and there were no physical barriers between the residential caravan site and the rear field which has been used as ancillary space associated with the main Bay Farm site.

During his time on the site, he had a keen interest in motorbikes. He would ride motorbikes in the rear field as a hobby. He enjoyed attending fireworks displays and BBQs in the summer, which were held in the Kempster's rear field.

Statutory declaration from Sarah Gomie dated 6th February 2024

She confirms that she has been storing her caravan from 2009 to date.

Confirms that when she is at her caravan, she is either taking it away or cleaning and airing it ready for holidays. She has witnessed activities taking place in the rear field just passed where their caravan is stored. These activities have included children playing and whizzing around the field on their bikes.

Statutory declaration from Tom Pengelly dated 6th February 2024

Confirms that he has been storing his caravan on the site since 2009.

He has walked his dog in the rear field with other dog owners who were using the facilities over the past 10 years plus.

His caravan is stored on an area made up of hardstanding. Most years before he took his caravan out in the holiday season, he would set out awning out and air his caravan in the rear field as it was a grass area and easier for him to peg out the large awning which was on his side of the caravan.

Confirms that over the years he has witnessed the grass in the rear field being cut by a man on a tractor with grass cutter behind.

Statutory declaration from Carna Emmerson

Confirms that in June 2015 she was hired by Janie Kempster to attend her son's birthday party in the rear field.

She had her own business at that time, known as Marvellous Mascots where she used to dress up as children's favourite TV and cartoon characters. She confirms that she was dressed as the Minion character in the photo taken at the birthday party in the rear field at Bay Farm in 2015.

Site visit on 25.03.24

Bay Farm Site visit with P Wiseman 25.03.24

Met the Agent (Bob Neville) on site.

Observation of the site showed the field at the back (though this is not part of the application site). The occupants of the land do use the rear field. It is not clear who owns this field.

Asked the Agent about where specifically the recreational activities have taken place on the site. He was not able to specify, aside from with one of the photos contained in the planning statement which shows the tower building blocks in the background.

29 caravans were being stored in the area. This contrasts to the previous site visit where there were 20 caravans being stored on the site.

The area was predominantly used for caravan storage with some quad bikes present.

One of the mobile homes had been demolished (lady who previously lived there has now deceased) and there was rubble on the ground from where this mobile home had been.

Following the site visit I contacted the Agent to request further information. Specifically, whether there are individuals living on the application site and whether all caravans contained on the application site are belonging to those people living on the land. I received a response to explain that Ian Hodges lives within the current application site in a touring caravan. He further clarified that the general context of the wider Bay Farm site has not changed significantly since the submission of the previous application

Consultation period responses

One Councillor commented that he does not know the site very well and can't confirm how long the use has been going on.

- One Councillor noted that from application PN/18/84077 there was nothing on this part of the site at the time of that application and that when looking at the history of the site it would appear that this is a reoccurring way of trying to obtain permission through the back door. They mentioned that they suspect that when the application was looked into by an Officer in 2018, any building would have been noticed and sent to enforcement, this being less than 10 years ago and so would not be accepted on a LDC.

Another Councillor explained that they have nothing further to add to the above comment.

One further Councillor did not have any specific comment relating to the application.

Enforcement action on site

Please see attached email to which details the enforcement history for the site.

Conclusion

Based on the evidence which was provided and in consultation with planners, I am minded to issue for a different description to that which was applied for. This is for 'Private amenity land ancillary to the area of land edged red'.

The Agent had proposed wording of 'Private amenity land ancillary to the residential caravan site use of land.'. Further to advise obtained from Counsel, we will issue for the following wording of 'Private amenity land ancillary to the area of land edged red' as this reflects the information evidenced.

The Agent has indicated that they remain of the opinion that the description should be reflecting (in part) the authorised use, i.e residential caravan park, however, they are content to accept the revised wording proposed by the Council in order to issue a positive decision on the application.

Please see attached the certificate and plan for approval.

Appendix 3: R (I'm Your Man Ltd) v North Somerset and the International Helicopter Museum (26/2/04)

I'M Your Man Limited v Secretary of State for the Environment



Positive/Neutral Judicial Consideration

Court

Queen's Bench Division

Judgment Date

4 September 1998

CO/728/98

High Court of Justice Queen's Bench Division (Crown Office List)

1998 WL 1042297

Before: Mr Purchase QC (Sitting as a Deputy High Court Judge)

Friday, 4 September 1998

Representation

Mr P Brown (Instructed by Messrs Davies & Partners , Gloucester GL4 7RT) appeared on behalf of the Applicant.

Mr R Singh [Ms S Davies – for judgment] (Instructed by The Treasury Solicitors) appeared on behalf of the Respondent.

Judgment

Friday, 4 September 1998

The Deputy Judge:

In this application I'm Your Man Limited applies under [Section 288 of the Town and Country Planning Act 1990](#) , to quash the decision of an Inspector appointed by the First Respondent dismissing the Applicant's appeal from the refusal by the Second Respondent of planning permission for the permanent use for sales, exhibitions and leisure activities of buildings at Weston Business Park, the Airport, Locking Moor Road, Weston-Super-Mare. This application gives rise to an important point of principle concerning “limitations” imposed on planning permission. Put shortly, on the 15th February 1995 an Inspector on appeal granted planning permission for the use of the buildings for “sales, exhibitions and leisure activities for a temporary period of seven years”. No condition was imposed requiring cessation of that use at the end of seven years. Would continuance of the use beyond seven years constitute a breach of planning control? In other words, was the permission in effect permanent or temporary. Additionally there are related issues (1) whether the status of the permission was material to the decision with which this application is concerned and (2) discretion. Mr Paul Brown, who appears for the Applicant, accepts that, if on its true construction the earlier permission was temporary, his application must fail. I will deal with the main issue before considering the other issues.

Permanent or Temporary?

Background

The appeal premises comprise two large hangars and ancillary accommodation on the former Weston Airport. In 1994 application was made for planning permission for the use of the buildings for sales, exhibitions and leisure activities for

a temporary period of seven years. An appeal was made against non-determination. The appeal was conducted by written representations. In his decision letter dated the 15th February 1995, at paragraph 6, the Inspector identified the main issue as “the effect of the vehicle movements the proposal would generate on the free and safe flow of traffic on the A371.” At paragraph 14 he concluded that the traffic generated would not be unduly detrimental in that respect. At paragraph 18 he allowed the appeal and granted “planning permission for additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years at Weston Business Park ... in accordance with the terms of the application” subject to various conditions, none of which required cessation of the use after seven years. On the 17th April 1997 the Applicant applied for the permanent use of the premises for the same purposes. That application was refused. The Applicant appealed, relying, inter alia, on the ground that the 1995 permission was in effect a permanent planning permission. The appeal was also conducted by written representations. In the representations at para. 1.03, the Applicant explained that what was sought was confirmation that the permitted use was permanent. In [Section 5](#) of the representations it set out reasons why the 1995 permission was in effect permanent. In their response the Second Respondent commented on the Applicant's representations, including the following:

“8.1 Much of the (Applicant's) statement strives to justify why the existing seven year temporary consent is in fact permanent ... the Local Authority would suggest that the temporary seven year period was implicit in the previous consent and unambiguously stated within the description. Seven years was the period applied for and it was clearly on this basis that the Inspector reached his decision. There appears to the Local Authority to be no justification whatsoever either legislative or otherwise to disregard this unequivocal statement by the Department of the Environment.

8.2 The authority fails to understand the (Applicant's) claim that the permanent use of the site would somehow be exempt from enforcement action. It is a statutory obligation of any local planning authority to investigate breaches of planning permission and then act accordingly.”

In his decision letter dated the 16th January 1998 the Inspector referred to the competing contentions at paragraphs 20 and 21. He continued:

“Whereas as I accept as a general point the thrust of your argument that the 1994 and 1995 permissions are material considerations in relation to this appeal, it is not for me to reach a conclusion as a matter of law as to whether or not the latter consent is of a temporary or permanent nature. Nevertheless, the fact that planning permission was granted conditionally on appeal in 1995 for the development now applied for is clearly a matter to which I shall afford weight in this appeal.”

The Inspector did not thereafter make a clear finding whether or not the 1995 permission was temporary or permanent in effect. I will deal with the remainder of the decision letter, so far as relevant, later in this judgment. He dismissed the appeal.

The Statutory Provisions

It is convenient in the first place to set out the relevant statutory provisions. By [Section 57\(1\)](#) of the 1990 Act, subject to the subsequent provisions of the Section, planning permission is required for the carrying out of any development of land. So far as relevant, by [Section 55\(1\)](#) development means the making of any material change in the use of any buildings or other land. By [Section 58](#) planning permission may be granted by a [Development Order](#) or by the Local Planning Authority (or the Secretary of State) on application to the authority in accordance with a [Development Order](#).

By [Section 60\(1\)](#) planning permission granted by a [Development Order](#) may be granted either unconditionally or subject to such conditions or limitations as may be specified in the Order. I would comment that that provision has remained in substantially the same form since the Town and Country Planning Act 1947 (see 1947 Section 13(2)). Thus, in the [Town and Country Planning General Development Order 1988](#) and the current [General Permitted Development Order 1995](#) planning permission was and now is granted “subject to any relevant exception, limitation or conditions specified in the schedule”. For example, [Part 4, Class B](#) of the 1995 Order permits the use of land for not more than 28 days in total in any calendar year subject to specified limitations and exceptions. While no conditions are specified under Class B, Class A (which deals with temporary buildings) is subject to conditions requiring that the buildings be removed and the land reinstated.

By [Section 70\(1\)](#) of the 1990 Act, where an application is made to the authority for planning permission, the authority may grant planning permission either unconditionally or subject to such conditions as it thinks fit or it may refuse permission. By [Section 79](#) and [Schedule 6](#) the Secretary of State or an Inspector on appeal may deal with the application as if it had been

made to him in the first instance. Those provisions have also remained in substantially the same form since the 1947 Act (1947 Sections 14(1) and 16(2)).

[Section 72\(1\)](#) provides:

“Without prejudice to the generality of [Section 70\(1\)](#), conditions may be imposed on the grant of planning permission under that section ... (b) for requiring the removal of any building or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of the specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.”

[Article 22 of the General Development Procedure Order 1995](#) requires that a decision notice shall “state clearly and precisely the full reasons ... for any condition imposed ... ”. [Section 78 \(1\)\(a\)](#) provides a right of appeal where the Planning Authority “refuse an application or grant it subject to conditions”.

I note that, in contrast to the power granted in respect of the grant of planning permission by [Development Order](#) (which expressly includes the imposition of limitations) and the provisions specifically providing for the imposition of and appeal against conditions, there is no express power to impose limitations on the grant of planning permission on an application.

[Section 57\(2\)](#) provides:

“Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted”.

[Section 72\(2\)](#) provides:

“A planning permission granted subject to such a condition as mentioned in sub-section (1)(b) is in this Act referred to as “Planning permission granted for a limited period”.”

[Section 72\(1\)\(b\)](#) (to which I have referred above) provides for the imposition of a condition requiring the removal of buildings or works for the discontinuance of use of land at the end of a specified period. The definition does not, therefore, include the imposition of a time limit by limitation. In contrast, [Section 57\(3\)](#) provides:

“Where by a Development Order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.”

That provision was first introduced by amendment to [Section 18](#) of the 1947 Act by [Section 58 of and the Seventh Schedule to the Town and Country Planning Act 1959](#) . I deal with the context of those amendments later in this judgment.

[Section 91\(1\)](#) of the 1990 Act provides for the imposition of a condition requiring commencement of a permission within a specified period. By [Section 91\(4\)](#) “Nothing in this section applies (a) to any planning permission granted by a [Development Order](#) ... (c) to any planning permission granted for a limited period ... ”. Thus the section does not apply to permissions granted by a [Development Order](#) , whether subject to a limitation or not, but, by virtue of the definition in [Section 72\(2\)](#) (see above), planning permission granted on an application is excluded if limited to a specific period by condition but not otherwise.

[Part VII](#) of the 1990 Act deals with enforcement. [Section 171\(1\)](#) provides, so far as relevant:

“For the purposes of this 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”.

I should briefly deal with the statutory pedigree of this provision. Section 23(1) of the 1947 Act did not refer to the failure to comply with a limitation. In *Cater v Essex County Council (1960) 1 QB 424* the Divisional Court held that continuation of a temporary use beyond the 28 day period permitted under what was then Class IV of the General Development Order 1950 did not constitute a breach of planning control under that section. Following that decision, Parliament enacted [Section 38 of the Town and Country Planning Act 1959](#), which provided, so far as relevant:

“(1) Where by Development Order (whether made before or after the commencement of this Act) permission is granted for any development subject to limitations specified in the Order, Sections 23 and 24 of the Act of 1947 (which relate to the enforcement of planning control) shall, subject to the provisions of this Section, have effect in relation to any non-compliance with those limitations as they have effect in relation to non-compliance with any condition subject to which permission is granted for any development.

(2) For the purposes of this Section and of the Act of 1947, any provision of a Development Order (whether made before or after the commencement of this Act) whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references to limitations in this Section or in that Act) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that permission on more than that number of days in that period.”

[Section 58 of and Schedule 7](#) to the 1959 Act made amendments to the 1947 Act (described in the side note as “minor and consequential amendments and repeals”). The amendments included the addition of sub-section 6 to Section 18 of the 1947 Act, to which I have referred above, and the addition of “or limitation (s)” after the references to “condition(s)”, where appropriate, in Sections 23 and 24 of the 1947 Act.

The [Town and Country Planning Act 1962](#) consolidated the earlier planning enactments. [Section 45](#) provided, so far as relevant:

“(1) Where it appears to the Local Planning Authority (a) that any development of land has been carried out without the grant of planning permission required in that behalf in accordance with Part III of this Act, or (b) that any conditions or limitations subject to which planning permission was granted have not been complied with, then ... the Local Planning Authority ... may ... serve a notice under this Section (in this Act referred to as an “Enforcement Notice”).”

That provision was in substantially the same form as Section 23(1) of the 1947 Act as amended by [Section 58 of and the Seventh Schedule](#) to the 1959 Act. The relevant part is now found in [Section 171A\(1\)](#) of the 1990 Act, to which I have referred above. [Section 38](#) of the 1959 Act was not re-enacted.

[Section 177\(1\)](#) of the 1990 Act deals with the powers of the Secretary of State on appeal from an Enforcement Notice, which include: “(b) The discharge of any condition or limitation subject to which planning permission was granted”. That provision derived from the more detailed provisions for enforcement introduced in the [Town and Country Planning Act 1968](#) (see 1968 [Section 16\(5\)](#)). [Section 187A](#) of the 1990 Act (introduced by the [Planning and Compensation Act 1991](#)) provides for breach of condition notices. By [Section 187A\(13\)\(a\)](#) condition is defined to include limitation. Provision is made for certificates of lawful use under [Section 191](#)

(as amended pursuant to the 1991 Act), which refers to breach of limitations as well as conditions. In its unamended form, [Section 191](#) provided for established use certificates also by reference to limitations as well as conditions. That provision itself derived from the 1968 Act.

Thus, taken as a whole, the enforcement related provisions, now found in [Part VII](#) of the 1990 Act refer to the breach of both conditions and limitations, but they have only done so since the 1959 Act. Whilst [Section 38](#) of the 1959 Act was not re-enacted, the amendments then made to Sections 18 and 23 of the 1947 Act have been carried through and re-enacted in subsequent legislation.

Submissions

Mr Brown submits that the 1990 Act does not provide for the grant of planning permission subject to limitations otherwise than by a [Development Order](#). He draws attention to [Sections 70\(2\) and 72\(1\)](#), which make express provision for conditions limiting the period of a permission but do not refer to the imposition of limitations. That is consistent, he says, with [Section 57\(2\)](#) of the Act, which only applies to a permission defined in [Section 72\(2\)](#), that is subject to a condition. Those provisions are in contrast to [Section 60](#) of the Act, which expressly provides for planning permission to be granted by a [Development Order](#) subject to conditions or limitations. They are all themselves consistent with [Section 91](#) of the Act, which excludes permission granted by [Development Order](#) (whether or not subject to limitation) and by a “planning permission granted for a limited period”, as defined in [Section 72\(2\)](#). Thus, he submits, there is nothing in [Part III](#) of the 1990 Act to suggest that a limitation can be imposed on the grant of planning permission on an application otherwise than by condition. The definition of breach of planning control in [Section 171A\(1\)](#) of the Act is itself consistent with those provisions. That provision should be considered in the light of its statutory history as set out earlier in this judgment. The reference to limitation, he submits, was clearly intended to ensure that limitations imposed by [Development Order](#) could be the subject of enforcement under the Act. There is no ground for any further inference as to a more general power. He further submits that development for the purposes of the Act, so far as relevant, consists of a change of use, that is the change from one use or non-use to another use. Thus, once the change has taken place, development as defined would not be involved in the continuance of the same use. Accordingly, in the absence of a condition requiring discontinuance of the use, continuation of the use would not constitute development or a breach of planning control for the purposes of the Act.

Mr Rabinder Singh, who appears for the First Respondent, submits that it is plain that the 1995 planning permission was for a limited period. The Inspector could only grant planning permission for what had been applied for, that was in the present case a temporary permission. Thus, he submits, the change of use permitted was to a use for that limited period. Use beyond seven years was not permitted. Limitation should not be given any technical meaning in this context. [Section 45](#) of the 1962 Act was deliberately cast in wider terms in that [Section 38](#) of the 1959 Act was not re-enacted. There is no definition of limitation in the Act and, accordingly, no ground for restricting its meaning so as to exclude a limitation placed on the development permitted, as in the present case. Limitation was well able to be enforced under [Part VII](#) of the 1990 Act, having regard to the definition of breach of development control in [Section 171A](#).

Decision

There are two fundamental questions to be addressed in determining the effect of the permission in the present case, namely:

- (1) Should a power be implied to impose limitations on permission granted otherwise than by a [Development Order](#); and
- (2) What is the effect of a use permitted on an application expressed to be for a limited period.

I will deal with these in turn.

Implied Power?

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, supported by the absence of any re-enactment of [Section 38](#) of the 1959 Act. In my judgment, the references in the enforcement related provisions to breach of limitation as well as condition is equally consistent with a reference to limitations expressly authorised as part of the power to grant permission by [Development Order](#). That does not to my mind necessarily imply that the Planning Authority or the Secretary of State has a statutory power to impose limitations on permissions granted on an application that would be amenable to enforcement under the Act. In enacting the 1959 Act, Parliament considered it appropriate to make express provision in [Section 38](#) in respect of limitations imposed pursuant to a [Development Order](#) in addition to making amendments to the relevant sections of the 1947 Act. [Section 38\(1\) and \(2\)](#) of the 1959 Act provided that limitations imposed by a [Development Order](#) and specifically the limitation on the number of days for temporary use could be enforced under the 1947 Act. It is apparent that the amendments in the Seventh Schedule to Sections 18, 23 and 24 of the 1947 Act were intended to carry through that statutory objective. In my judgment, there was nothing in the 1959 Act that justified an implication that the Planning Authority or the Secretary of State had power to impose limitations on the grant of permission pursuant to an application that would be enforceable in a similar manner to limitations imposed under a [Development Order](#). The

amendments were re-enacted in the 1962 Act, albeit without re-enactment of [Section 38](#) of the 1959 Act. The 1962 Act is described as a consolidating Act. The omission of [Section 38](#) of the 1959 Act does not in my judgment provide ground for inferring that the definition of breach of planning control, which was introduced by the 1959 Act by way of amendment to the 1947 Act to include limitations on permission granted by a [Development Order](#), should be construed as conferring a more general power to impose limitations on planning permission granted pursuant to applications under the Act. The framework of what is now the 1990 Act, including the provisions which I have set out above, strongly indicates to the contrary. That would include (1) the provisions expressly dealing with the imposition of conditions ([ss 70\(1\) and 72\(1\)](#)), (2) the absence of any express right to appeal against a limitation imposed pursuant to an application for permission ([s 78\(1\)\(a\)](#)), (3) the provisions for the resumption of normal use ([s 57\(2\)\(3\)](#)) and (4) exceptions to the requirement for commencement conditions ([s 91\(4\)](#)). I accordingly reject Mr Singh's submission that there is an implied power for the Planning Authority or the Secretary of State to impose on a permission granted pursuant to an application limitations capable of enforcement under the Act. In my judgment, the reference to limitations in [Part VII](#) of the Act is a reference to limitations imposed under a [Development Order](#), for which provision is expressly made under the Act.

Use for a Limited Period

Mr Singh's alternative submission is that the use permitted by this permission was not simply use for sales, exhibitions and leisure activities but was use for "sales, exhibitions and leisure activities for a temporary period of seven years". In other words, the use itself should be seen as a use limited for that period. I have doubt whether the character of a use for the purpose of [Section 55\(1\)](#) of the 1990 Act can properly include without more whether the use was temporary or permanent. Change of use is from one use or non-use to another use and should be considered in terms of the character of the use of the land. Materiality for the purposes of [Section 55\(1\)](#) should be judged as a matter of degree on a comparison between the use before and after the change. I do not consider that generally the character of a use would alter whether it was to last for one year or seven years or was permanent. In most cases the use of the land on each basis would be for planning purposes identical. That seems to me consistent with the Divisional Court decision in *Cater v. Essex County Council* (supra), where a similar argument was rejected by Lord Parker CJ at pages 437/438. That conclusion is reinforced in my mind by considering the position as to enforcement at the end of the seven year period. I remain unpersuaded by the submission made by Mr Singh that the continuance of the use beyond seven years would in itself constitute a material change of use. It is at least partly for that reason that the Act provides under [Section 72\(1\)\(b\)](#) for a condition requiring the discontinuance of use at the end of the period.

In the present case, the relevant application was for a temporary period, thus effectively volunteering a condition in accordance with what is now paragraph 110 of the annex to Circular 11/95. The imposition of a temporary condition was plainly open to the 1995 Inspector. His failure to impose such a condition might well have been open to criticism. His decision, however, became immune from challenge after six weeks by virtue of [Section 284](#) of the 1990 Act. That does not provide grounds for implying a condition to that effect in what is a public document, conferring rights in connection with the use of land. In my judgment, accordingly, the permission as granted became effectively a permanent permission.

Thus, on the main issue in this application I accept Mr Brown's submission that the 1995 permission permitted change of use of the appeal buildings to sales, exhibition and leisure activities and did not impose any limit on the period for that use would be subject to enforcement under [Part VII](#) of the 1990 Act. Accordingly, the issue as to the effect of the permission raised in the representations on the subsequent appeal should, if it was material to the Inspector's decision, have been resolved in the Applicant's favour.

Materiality

Mr Singh submits that, properly understood, this Inspector found it unnecessary to decide whether the 1995 permission was temporary or permanent. The Inspector concluded, he submits, that on either basis Government policy in PPG6 as to the sequential approach was paramount and the appeal should be dismissed. In particular he relies upon paragraph 40 of the decision letter, where the Inspector stated:

"I have carefully considered the weight which should be attached to the planning history of this site, particularly in relation to the planning permissions which have been granted. I agree with you that some significant weight should be applied to these considerations, but, even allowing for that, I believe that the importance of implementing contemporary Government policy in relation to development of this type and the sequential approach, notwithstanding the other considerations, to be paramount in this case. For these reasons this appeal must fail."

In that paragraph, Mr Singh submits, the Inspector agreed in terms with the Applicant that “some significant weight” should be attached to the planning permission that had been granted in 1995. However, the Inspector went on to conclude that the sequential policy approach was “notwithstanding the other considerations” paramount. The weight to be attached to those considerations was entirely for the Inspector. He plainly concluded, Mr Singh submits, that, whether the permission was permanent or temporary, the appeal should be dismissed.

That submission by Mr Singh must be seen in the context of the decision letter as a whole. At paragraph 21, as I have set out above, the Inspector stated that “It is not for me to reach a conclusion as a matter of law as to whether or not the (1995) consent is of a temporary or permanent nature.” As Mr Brown submits, the nature of the permission was in issue between the parties. It was plainly of potential relevance to a decision on the appeal and accordingly an issue to be determined by the Inspector in so far as it became material to his decision, even if it was to an extent a matter of law.

In paragraph 23 the Inspector continued:

“I will take full account of the planning history of the appeal site, including the terms of the relevant appeal decisions and the reasons for them. I will not, however, look behind the status of the 1995 decision other than to note the terms of the planning permission granted. The appeal before me is for the permanent use of the site in the manner proposed and I shall consider that development on its merits, having regard to the matters I have identified above.”

The sense of the comment “I will not ... look behind the status of the 1995 decision other than to note the terms of the planning permission granted” is obscure, but it is, in my judgment, at least consistent with a conclusion by the Inspector that he would take account of the 1995 decision “in the terms” in which it was granted, i.e. as a permission for seven years, in contrast to the permanent use sought in the appeal before him. That approach would be in conflict with what I have concluded earlier in this judgment to be the true position in law, namely that the planning permission as granted was not subject to an enforceable limitation restricting it to seven years but was in effect permanent.

At paragraph 36 the Inspector continued:

“I am very conscious of the fact that planning permission has been granted on the appeal site for the development you wish to implement. I have already stated that I do not regard it as part of my function now to express an opinion as to the validity of that consent in terms of its temporary/permanent nature and that matter is not before me.”

That passage again seems to me to demonstrate that this Inspector had concluded that it was no part of his statutory function to resolve the issue as to the status of the permission before him. I have already indicated earlier in this judgment that the status of the permission was potentially relevant and thus, potentially, a matter for the Inspector to resolve.

He continued in the same paragraph:

“Whatever the terms of that permission, it was granted before the publication of PPG6 (revised) and the development proposed was not assessed in relation to the sequential approach.”

The earlier grant of planning permission may be material to a subsequent decision having regard to the desirability of consistency in decisions made in respect of the same development and on similar facts (*North Wiltshire District Council v. The Secretary of State for the Environment* (1993) 65 PCR 137). That is a different consideration from what is known as the fall-back position, i.e. the use to which land may be put even if permission is refused on the instant application (*Spackman v. The Secretary of State for the Environment* (1977) 1 All ER 257 ; *Brentwood Borough Council v. The Secretary of State for the Environment* (1996) 72 PCR 561). In my judgment, on a fair reading of this part of the decision letter, the Inspector was there considering the earlier appeal decision on the former basis, that is having regard to the desirability that his decision was consistent with the earlier decisions. He does not appear, at least in this paragraph, to have considered the fall-back position or its implication if the 1995 permission was in effect permanent. That is consistent with paragraph 38 of the decision letter, where the Inspector stated:

“Despite what you say on this issue I consider that the publication of PPG6 (revised) is a material consideration in this appeal which distinguishes it (in policy terms) from those decided previously in 1994 and 1995.”

In paragraph 39 the Inspector concluded that the proposed development would be in breach of the sequential approach in PPG 6 and that the appeal must fail unless other material considerations outweighed that finding.

The Inspector then went on in paragraph 40 (set out above) to agree that “some significant weight” should be attached to the planning permissions that had been granted, but to conclude that the importance of implementing the sequential approach was paramount. In the context of the decision letter as a whole, it is at that point far from clear on what basis the Inspector was approaching the earlier planning permissions and in particular the 1995 permission. As I have said, he declined to determine the status of the 1995 permission. If it was in effect a permanent permission, the appeal would only have been seeking what would have amounted to a change in the description of the relevant development. That would have been potentially of considerable materiality to the decision and one would expect it to have been specifically addressed in the decision letter. There was, however, no reference to that consideration as part of the Inspector's conclusions. Given the absence of specific mention of that key factor together with the other passages in the decision letter to which I have referred, I am unpersuaded that the Inspector took into account that the effect of the 1995 permission was or even may have been permanent or that he concluded that the sequential approach in PPG 6 should prevail, even if the existing permission was in effect permanent. It seems to me that this Inspector failed to have regard to the position that I have held to be correct as a matter of law, that is that the 1995 permission was in effect a permanent permission for the use of the land for the purposes that were the subject of the subsequent appeal.

Paragraph 43 of the decision of the letter is consistent, in my judgment, with that conclusion, where the Inspector states “I have fully considered all the other matters raised. In particular, I have taken into account the conclusions and decisions of the Inspectors in relation to the previous appeals and, in so far as I have concluded differently to them on the merits of this case, this is due to the substantially revised policy background against which I am considering this matter.” I conclude, accordingly, that the Inspector failed to have regard to a material consideration, namely that the 1995 permission was in effect permanent, and in so doing erred in law.

Discretion

In my judgment, on the findings I have made, there is no ground for exercising my discretion to refuse the relief claimed.

This application accordingly succeeds and the decision will be quashed.

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Appendix 4: Main v SoS (22/5/98)

Main v Secretary of State for the Environment, Transport and the Regions

Queen's Bench Division | May 22, 1998 | (1999) 77 P. & C.R. 300

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Positive/Neutral Judicial Consideration

Court

Queen's Bench Division

Judgment Date

22 May 1998

Report Citation

(1999) 77 P. & C.R. 300

Queen's Bench Division

(Mr Malcolm Spence, Q.C. sitting as a Deputy High Court Judge):

May 22, 1998

Town and country planning—Site used as scrap yard and for other purposes, including haulage and skip hire—Application for certificate of lawfulness of existing use—Certificate granted for use as scrap yard involving dealing, storage and processing of scrap metal—Whether other uses ancillary or primary—Whether certificate sufficiently precise

The applicant used a site of some 10.5 hectares for a variety of purposes, including use as a scrap yard and for the breaking of motor vehicles for the selling of recovered parts. He also operated his own lorries and trailers and the hire of skips from the site. These were used for purposes connected with the operation of the scrap yard but also to transport materials whose source or destination was not the appeal site. He applied for a certificate of lawfulness of existing use or development under [section 191\(1\) of the Town and Country Planning Act 1990](#) . A certificate was granted by the second respondent council for “the dealing, storage and processing of scrap metal”. The applicant was dissatisfied with the terms of the certificate and, on appeal to the Secretary of State, there was substituted a new certificate for “the use of land as a scrap yard, involving the dealing and processing of scrap metal”. It was concluded however, that the other uses to which the site was put were either ancillary to the primary use as a scrap yard or carried out on such a small scale or infrequent or irregular basis that they were *de minimis* . The applicant remained dissatisfied, in particular that use of the site had been identified as being one overall use, *i.e.* use as a scrap yard, which embraced a number of ancillary or incidental uses. He considered that the uses on the site should be identified in the certificate as separate and distinct primary uses. In any case, even if the uses were ancillary, the certificate did not describe them with sufficient particularity as required by Circular 10/97 . On an application to quash the certificate:

Held, allowing the application, that the haulage and skip hire activities which were not mainly connected with the operation of the scrap yard could not properly be said to be ancillary to the scrap yard in the sense meant in this branch of the law. The Inspector appeared to have put these activities on one side merely because they were relatively small. In so doing, the Inspector had erred in his use of the word “ancillary” and thus misdirected himself in law. Upon proper reconsideration, these uses might well be held to be independent primary uses forming part of the composite use of the site and in that event they should be mentioned expressly in the certificate of lawfulness of existing use or development. Further, the certificate actually issued in this case was not precise and was, in fact, inaccurate in that, as found by the Inspector, there were included within the ancillary uses not merely “dealing, storage and processing of scrap metal” but a number of other ancillary uses. It was erroneous and wrong in law for a certificate of this kind, if it was going to comply with what is called in Circular 10/97 “further qualification”, to include some of the required particularity but not all of it.

Cases referred to:

- (1) *Allen v. Secretary of State for the Environment and Reigate and Banstead Borough Council* [1990] 1 P.L.R. 25; [1990] J.P.L. 340 .
- (2) *Brazil (Concrete) v. Amersham Rural District Council* (1967) 18 P. & C.R. 396; (1967) 111 S.J. 497; 65 L.G.R. 365; 202 E.G. 413, CA . ***301**
- (3) *Broxbourne Borough Council v. Secretary of State for the Environment* [1980] Q.B. 1; [1979] 2 W.L.R. 846; [1979] 2 All E.R. 13; (1978) 38 P. & C.R. 381; (1978) 249 E.G. 959; [1979] J.P.L. 308; (1978) 77 L.G.R. 381, DC .
- (4) *Burdle v. Secretary of State for the Environment* [1972] 1 W.L.R. 1207; [1972] 3 All E.R. 240; (1972) 24 P. & C.R. 174; 116 S.J. 507; 70 L.G.R. 511, DC .
- (5) *Emma Hotels v. Secretary of State for the Environment and Southend-on-Sea Borough Council* (1981) 41 P. & C.R. 255; [1981] J.P.L. 283; 258 E.G. 64; [1981] E.G.D. 1037, DC .
- (6) *Trentham (G. Percy) Ltd v. Gloucestershire Council Council* [1966] 1 All E.R. 701; 18 P. & C.R. 225; 130 J.P.L. 179; 110 S.J. 52; 64 L.G.R. 134, CA .
- (7) *Trio Thames Ltd v. Secretary of State for the Environment and Reading Borough Council* [1984] J.P.L. 183 .
- (8) *Wipperman v. Barking London Borough Council* (1965) 17 P. & C.R. 225; 64 L.G.R. 97, DC .

Legislation referred to:

Town and Country Planning Act 1990, s.191 .

Application by Raymond John Main to quash a certificate of lawfulness of existing use or development in the terms granted by the first and second respondents, the Secretary of State for the Environment and South Oxfordshire District Council respectively, in respect of a site at Ewelme in South Oxfordshire.

Representation

Harry Wolton, Q.C. for the applicant.
Timothy Mould for the first respondent.

Mr Malcolm Spence, Q.C.

For more than 40 years there has been a site of about 10.5 hectares near Ewelme in South Oxfordshire used for what I shall, for the moment, simply call scrap-yard purposes. There are also three houses on the site. There have been a series of planning permissions granted over the years. At the time when the inquiry concerning this site took place in May 1997 the Inspector described it as follows:

“6. Materials and items of one sort or another have been deposited on almost all of the land in what appeared to me to be a haphazard manner. The stockpiling of scrap metal was more intensive on the central part of the site, to the south of Castle Main, closest to the machinery. In this area vehicles and other scrap were piled to a height of some 9 or 10 metres. Elsewhere, although materials were not stacked to this height, the site's surface was covered with an extensive variety of vehicles, materials and items. On many parts of the site, particularly towards the southern boundary, trees, bushes other vegetation was growing between deposited items and, together with the extent of corrosion present, suggested to me that they had lain there for many years.

7. Walking around the tracks within the site I was able to gain an impression as to the type of material present on the site. I noted a large number and wide range of vehicle parts and vehicles of one kind or another, including cars, motor cycles, lorries, buses, contractor's plant, fire engines, tractors and caravans and other trailers. In addition I saw an extensive assortment of other items, ranging from massive metal tanks, silos and industrial machinery to small domestic articles. Also on the site were a number of skips, some of which were filled with what appeared to be scrap metal, others were empty.

8. There were several buildings on the central part of the site, some in a *302 dilapidated condition, others open sided and used for storage or scrap sorting. This building described as the workshop is constructed in brick and blocks with an asbestos sheeting roof. Inside I saw tools and equipment, including two ramps and welders. There were old Ford and Humber cars, one on the ramps and the other undergoing bodywork repairs. In addition there were several ex-WD jeep type vehicles. A weighbridge stands on the main roadway into the site, with an adjacent office building housing the scales. Towards the site's north-western boundary are two further weighbridges, only one having scales.”

The applicant wished to obtain a certificate of lawfulness of existing use or development in respect of what I have just set out, and so his agent made an application under [section 191\(1\) of the Town and Country Planning Act 1990](#) .

The certificate which the second respondent council granted was as follows: “the dealing, storage and processing of scrap metal plus three dwelling houses.” The applicant was dissatisfied with that certificate and appealed to the Secretary of State for the Environment. An inquiry was held. On the Inspector's recommendation the appeal was dismissed but there was substituted a new certificate as follows:

“The use of land as a scrap-yard, involving the dealing, storage and processing of scrap metal and the residential use of three dwelling-houses.”

The applicant is dissatisfied with this new certificate and applies to this court to quash it. There are a variety of points set out in the Notice of Motion settled by Mr Wolton, who appears for him, but in essence two points arise, the first being; “Are the different uses on this site separate and distinct primary uses or is there one overall primary use (ignoring the three houses) which embrace a number of ancillary or incidental uses?” It is worth mentioning that the 10 year rule does not play a part in the case because all these uses are old.

The Inspector made some useful findings of fact, which I shall not read, and he made a series of detailed conclusions about all these uses and they were accepted by the Secretary of State. I shall read paragraph 5 of the Secretary of State's decision letter:

“5. The Inspector's conclusions have been carefully considered and are accepted for the reasons he gives. It is agreed with him that for a certificate to be issued in the terms of the application it would be necessary for your client to show that the range of uses he has specified were being carried on on the site as separate and distinct uses from the operation of the scrap yard which has, although not using that term, been certified as lawful by the council. The Inspector's analysis of the way in which the various aspects of the business are carried on has been carefully considered and it is agreed with him that none of those uses have been shown on the evidence available and on the balance of probability, to form separate uses of the site in their own right, and that it is appropriate to describe the use of the appeal site as a scrap yard involving the dealing, storage and processing of scrap metal, together with three dwellinghouses in residential use. The Inspector recommends that the certificate issued by the council be amended to take in the term ‘scrap yard’, but as the Secretary of State has no power to vary the terms *303 of a certificate in these circumstances, a fresh certificate will be issued in the terms recommended by the Inspector.”

Almost every one of the Inspector's conclusions is relevant to this case, however, I shall do no more than cite some of them:

“38. I now look in turn to each of the uses which the appellant claims are separate and distinct in terms of their character and which, it is maintained, have been carried on over the relevant 10 year period. I accept Mr Young's argument that there is a distinction between a scrap yard use and the breaking of motor vehicles in order to sell recovered parts. The appellant has submitted some 40 invoices for the sale of vehicle parts in the period from 1 February 1985 and 2 June 1995, and several of the interested persons who gave evidence stated that they had purchased parts for cars, lorries and military vehicles.

39. In my opinion and experience it is by no means uncommon to find this type of sales taking place at scrap yards, especially those as extensive as Woodside. I consider that, in order to represent a distinct and separate use, car breaking would have had to have taken place on an organised and systematic basis. This is not the case at the appeal site. There is no systematic dismantling of vehicles and no organised stocking of spare parts ready for sale. Essentially, potential customers visit the site seeking parts which may be of use to them. Generally parts are removed from vehicles by the customers themselves. This seems to me to be an indiscriminate, low key activity which is part and parcel of the operation of the scrap yard. Consequently, I consider that, as a matter of fact and degree, any car breaking activity which has taken place on the appeal site can be regarded as ancillary to the scrap yard use, and does not constitute a use in its own right.

40. In considering the claimed use as a general dealer in motorcars and other types of mechanically propelled vehicles it is apparent to me that Mr Main conducts his business in a somewhat idiosyncratic manner. Rather than process all vehicles and other items when they are brought to the site, he often retains them on for long periods. I heard evidence that certain vehicles have been left for 40 or 50 years, and my observations at the site were that many vehicles were engulfed by vegetation and heavily corroded. Mr Main's attitude appears to be that he stores items until he decides they should be scrapped and in the interim they are available for sale or as a source of spare parts. There does not seem to be any systematic method of deciding which vehicles are to be scrapped and which retained. The fact that many people who rebuild, restore and run all types of older vehicles such as military vehicles and vintage cars consider Woodside to be a valuable source of vehicle shells and spares is testimony to the length of time many items remain on the site.

41. The impression I gained during my visits to the site was that the vast majority of vehicles there had reached the end of their operational life. Consequently, I would consider them best described as scrap. There is evidence of the sale of vehicles from the site, but it seems to me that this relates predominantly to scrap vehicles. The submitted invoices (Doc 5 *304 RJM14) include several references to ex-WD vehicles, old lorries, lorry bodies and trailers. I consider that to other than an enthusiast or restorer most of the vehicles sold from the site would be perceived as scrap. The sale of such vehicles from a scrap yard is not surprising and, bearing in mind the vast number present at Woodside, I do not consider the sale of 1, 2 or 3 per week to be out of the ordinary. Indeed, it would be unusual if a certain level of sales did not take place from a site of this size and nature. Therefore I conclude that the vehicle sales which have taken place fall within the general operation of the scrap yard and consequently comprise an activity which is ancillary to that primary use.

45. The Council did not dispute that the appellant, trading as Mains Motors, operates his own lorries, trailers and skips. Also there was no dispute that he holds a HGV operator's licence to operate 8 lorries and 3 trailers from Woodside, or that a licence has been held since August 1970. In my view the possession of an operator's licence does not necessarily mean that an independent haulage business has been carried on that the site has been used as a haulage depot, a term which implies general haulage activities. A scrap yard of the scale of Woodside would undoubtedly generate a significant demand for the transportation of materials to and from the site. It seems to me that Mains Motors was established primarily to provide and operate vehicles to serve this purpose.

46. The vehicles, trailers and skips owned by Mains Motors may well be used on occasions to transport materials whose source or destination is not the appeal site. I was told that the company collected malt waste and also transported waste paper. However, on the balance of probability, I consider that materials transported by the lorries, trailers and containers based at the site are primarily those associated with the operation of the scrap yard. Some of the many skips and containers I saw on the site were empty but most appeared to contain the type of materials normally found in a scrap yard. I therefore conclude that the haulage activities carried out on the site are mainly connected with the operation of the scrap yard and consequently ancillary to the main scrap yard use.

47. Earlier in the section of my report (para. 40) I describe my impressions of the operation of the appellant's business activities at Woodside. It is clear that Mr Main may decide not to process certain vehicles for scrap as soon as they arrive at the site and may choose to keep them for periods of up to 40 or 50 years before they are either sold or scrapped. I noted that within this extensive site there is an enormous number of vehicles of every type, under the shelters and within buildings, or in the open. My view is that in the vast majority of cases they were brought onto the site either by Mr Main or others as scrap and stored there in connection with the operation of this scrap yard, rather than awaiting sale or re-use for any other purpose. The number of vehicles sold from the site is very small compared with both the number brought in each week and the very high number present. My earlier conclusion was that such sales were ancillary to the scrap yard operations. Consequently, I consider that vehicles are stored at *305 Woodside primarily as part and parcel of the scrap yard use and therefore such storage is ancillary to that principal use.

50. Many of the items on the site at the time of my visits, heavy machinery and equipment, could be described as contractor's plant. I noted in particular the presence of the road rollers, trailers, fuel tanks, caravans and portable buildings. However, I saw nothing which either looked out of place within a scrap yard, or was obviously being stored awaiting sale rather than scrapping. As with the storage and the sale of motor vehicles, there is some evidence that items of contractor's plant have been sold from the site (Doc. 5). But it seems to me that such sales are infrequent and at a level commensurate with the operation of a substantial scrap yard business. The principal reason for contractor's plant being present on the site is therefore associated with the scrap yard, use and the storage of such items does not represent a separate use in its own right.

52. The appellant said in evidence that he had some 160 skips and containers which were used for storage of materials on the site and to collect material which is either returned to the site or delivered elsewhere. I noted the presence on the site of a significant number of skips and containers, both empty and holding materials. Documentary evidence was submitted (Doc 5 RJM16) that skips are hired out. Part of the skip hire operation concerns the collection for disposal of materials unrelated to the scrap yard, for instance malt waste and paper. However, bearing in mind the number of skips and containers owned by Mr Main, this represents only a very small proportion of an activity which I consider to be directly associated with the scrap yard use. The skips and containers which were on the site appeared to me to contain the type of materials normally associated with scrap yards. I would have expected to find a large number of skips and containers within a scrap yard as extensive as Woodside, and I consider that the collection of scrap and other material in skips and containers, its return to the site and storage prior to sale or sorting, is an integral part of the overall scrap yard operation. Accordingly, the storage of waste containers is an activity which is part and parcel of the main scrap yard use.

53. The Certificate as issued by the Council effectively relates to a mixed or composite use of the land, which comprises a single planning unit, for a scrap yard and residential purposes. The description 'scrap yard' is not used on the issued Certificate, but there is no doubt in my mind that the operations which have been carried on principally comprise the dealing, storage and processing of scrap metal, and constitute a primary use as a scrap yard. Therefore, in the interests of precision, I consider that the wording of the Certificate should be amended along the lines of the first part of the schedule accompanying the application to read: 'Use as a scrap yard, involving the dealing, storage and processing of scrap metal'. The appellant maintained that the other 8 uses included on the schedule were each separate and distinct uses in their own right. After considering each one

individually my conclusions are that they were either activities carried out as part and parcel of the operation of the scrap yard and therefore ancillary to that main use, or carried out on a *306 small scale or infrequent, irregular basis such that they were *de minimis* .”

Mr Wolton submits that a Lawful Development Certificate is an important document which should be precise and he refers to [section 191\(2\)\(a\)](#) :

“For the purposes of this act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) ...”

He referred me to certain other subsections, which I shall not read, all of which demonstrate that a certificate of this kind carries considerable importance. He also drew my attention to the circular in force at the time of the Inspector's report and the circular in force at the time of the decision, the latter circular being produced some three months before the decision, namely Circular 10/97 :

“8.16 Subsection (5) of section 191 provides for certain matters a LDC must contain. The LDC is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, sealed site-plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why and when. For example, if a certificate is for a use of land—unless the use falls within one of the ‘use classes’ specified in the UCO current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers lawfulness on the use—it is important for it to state the limits of the use at a particular date. These details will not legally be equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a ‘material’ change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude). A LDC must therefore be precisely drafted in all respects. (See also 8.11 about the need for applications to be specific.)

8.21 It is generally accepted that any ‘*sui generis*’ use which is not in a ‘use class’ in the UCO, such as a builder's yard or many haulage depots, can be ‘materially’ different in planning terms from another use which nevertheless falls within the same general description. In other words, there can be a ‘material’ change of use requiring planning permission between, for example, one builder's yard use, or a particular use as a haulage depot, and another. A change of ownership or occupation of land does not, in itself, constitute a material change of use. However, where a builder's yard has only in the past been used by a small jobbing builder for his office, and as a base for one or two vehicles and storing building materials, unless that detail and level of use are specified in the certificate (or by condition or limitation in a permission on which the LDC is based), the LPA will lack effective control in future over any *307 significant intensification of the use (perhaps by a building contract who introduces the storage of heavy plant and machinery, mixing of concrete and the manufacture of joinery items on to the land). Such an intensification, though arguably constituting a ‘material’ change of use from the former use, could not be controlled if the site benefited from a LDC which stated that it was lawfully ‘a builder's yard’ without further qualification.

8.22 Where a LDC is granted for one use on a 'planning unit' which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certified use if it extends to the whole of the land comprising the planning unit, to the exclusion of the other uses formerly taking place on some of the land (see *Wipperman v. Barking LBC* (1965) 17 P. & C.R. 225).”

Mr Wolton also drew my attention to the case of *Broxbourne Borough Council v. Secretary of State for the Environment* (1979) 38 P. & C.R. 381 , particularly pages 390 and 391. Robert Goff J. said:

“The case has, however, a moral. It demonstrates that planning authorities should exercise great care concerning the terms of established use certificates that they issue. If a certificate is not drawn with care, and expressly limited to the precise use in question, then its issue can lead to the consequence that the authority may, through its own act, find itself thereafter precluded from preventing a use for which planning permission would not have been granted simply because the certificate has been issued in terms wider than were necessary.

Kilner Brown J. said: I agree, and would merely wish to add a word or two with reference to what Robert Goff J. has described as ‘the moral’ to be drawn from this case.

In my judgment, it does underline the duty of a planning authority to consider with care whether or not the proposed terms of the certificate sufficiently particularise the existing use. The object of the exercise contemplated by section 94 is not only to avoid an examination of the history and existing fact, but also to identify both the nature and the extent of the use. This demonstrates that it is clearly important to be careful not only in order to avoid the conclusive effect of a loosely and widely phrased certificate, but also, as all counsel have agreed and as Robert Goff J. has just pointed out, for the assistance of a prospective purchaser.”

Before coming to the heart of Mr Wolton's submissions, I wish to refer to the case of *Brazil (Concrete) v. Amersham Rural District Council* (1967) 18 P. & C.R. where at page 399 Lord Denning gave a most helpful example of what is meant in this branch of the law by ancillary uses:

“Take for instance Harrod's store, the unit is the whole building. The greater part is used for selling goods: but some parts are used for ancillary purposes such as for offices and for packing articles for dispatch. The character of the whole is determined by its primary use as a shop. It is within Class I of the Use Classes Order . The ancillary use of part as an office does not bring it within Class II: and the ancillary use of *308 part for packing does not make it a light industrial building within Class III.”

That makes it extremely clear what is meant by the word “ancillary” in this branch of the law. Further illumination is shed on this aspect by the judgment of Bridge J. in *Burdle v. Secretary of State for the Environment* [1972] 3 All E.R. 240 where at page 244b he said:

“Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out some broad categories of distinction.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from the case of *G. Percy Trentham Ltd v. Gloucestershire County Council* ...”

Bridge J. went on to cite an extract from the judgment of Diplock L.J. and continued:

“But secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.”

He then goes on to the third category and then says:

“To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree.”

Mr Wolton's submission is that plainly the Inspector has erred in his use of the word “ancillary” and thus misdirected himself in law. He gave six examples falling within the Inspector's conclusions I have just read, but his point is stronger in the cases of two of them than in the others.

As to the haulage business, I would stress these words in paragraph 46:

“The vehicles, trailers and skips owned by Mains Motors may well be used on occasions to transport materials whose source or destination is not the appeal site. I was told that the company collected malt waste and also transported waste paper ...”

Then he went on to say that he considered that:

“materials transported by the lorries, trailers and containers based at the site are primarily those associated with the operation of the scrap yard.”

He concluded:

“I therefore conclude that the haulage activities carried out on the site are mainly connected with the operation of the scrap yard and consequently ancillary to the main scrap yard use.”

As to the skips I stress these words:

“Documentary evidence ... was submitted that skips are hired out. Part *309 of the skip hire operation concerns the collection and disposal of materials unrelated to the scrap yard, for instance malt waste and paper. However, bearing in mind the number of skips and containers owned by Mr Main, this represents only a very small proportion of an activity which I consider to be directly associated with scrap yard use.”

He concluded:

“Accordingly, the storage of waste containers is an activity which is part and parcel of the main scrap yard use.”

The haulage activities which are not mainly connected with the operation of the scrap yard, in my judgment, cannot properly be said to be ancillary to the scrap yard in the sense meant by Lord Denning or, indeed, at all in this branch of the law. The Inspector appears to have put that part of the haulage business on one side merely because it is relatively small; likewise in respect of the skips. Part of the skip hire operation is unrelated to the scrap yard, therefore it cannot possibly be part and parcel of the main scrap yard use. Again he appears to have put it on one side merely because it is relatively small.

As in Bridge J.'s second category it is not possible to say that these parts of the haulage and skip businesses are ancillary to the scrap yard. Whether this is truly so or not is a matter of fact and degree as Bridge J. reminds us in his judgment. However, it is plain on the face of the decision letter that if these uses are in part not ancillary to the scrap yard use, but merely relatively small (and in my judgment the Inspector must have been misunderstanding and misapplying the word “ancillary” in treating it as meaning relatively small) in doing so he has erred in law.

Mr Mould, who appears on behalf of the Secretary of State, cited to me the case of *Emma Hotels v. Secretary of State for the Environment and Southend-on-Sea Borough Council* [1981] J.P.L. 283 . That was a case concerning a hotel at Westcliff-on-Sea and the bar for the hotel came to be used in a manner akin to a public house visited by many people who were not residents at the hotel. The Secretary of State for the Environment held that the introduction of that use for non-residents, being something which was not an incident of the hotel but a separate use, involved a material change of use of the planning unit. The appellants appealed against that decision and Donaldson L.J. said this:

“The fact that it was a free house might well attract customers in larger numbers than would be the case if it were a tied house, but it did not follow from that that it ceased to be an hotel or that the attracting of non-residents involved a separate composite use within the same planning unit as something in the nature of a public house.”

That may well be the case on the facts of that case and in particular, in view of Donaldson's L.J. view of the facts, together with those of Hodgson J. who agreed. No authorities were cited by Donaldson L.J. and one does not know whether or not the basic principles about ancillary uses were taken into account, but I cannot treat Donaldson's L.J. view of the facts in that case, particularly the paragraph that I have read, as meaning that in the present case there was anything other than a mistake by this Inspector as to his use of the word "ancillary".

Mr Mould also cited to me two other cases: *Allen v. Secretary of State for the Environment* [1990] 1 P.L.R. 25, being a decision of Mr Roy Vander ***310** meer, Q.C., sitting as a Deputy Judge of this Division, but I gain little assistance from that judgment which is concerned principally with the submission that the element of use complained about was *de minimis*.

The other case which Mr Mould cited is *Trio Thames Ltd v. Secretary of State for the Environment and Reading Borough Council* [1984] J.P.L. 183, which was a case that was concerned with the question as to whether or not a change of use from "restaurant with dine and dance facilities" to use as a restaurant and nightclub involved a material change of use. I gain no assistance from it on the question of the proper approach as to the ancillary uses in the present case, save that in the judgment of Forbes J. in the right-hand column of page 183 there is a useful recital of the basic principles about ancillary uses all in line with Lord Denning's judgment in *Brazil Concrete*, though he does not cite that case.

I should add that I am particularly concerned that if the certificate were to remain in its present form then subsequently if Mr Main were to continue, or especially if he were to increase maybe slightly the use of his haulage and skip business for these purposes, that is to say purposes outside the site, the unrelated part of the business, he would be carrying out a use which is not mentioned in the certificate and thus be vulnerable to service upon him of an Enforcement Notice. That, in my view, cannot be right. These uses, upon proper reconsideration, may well be held to be independent primary uses forming part of the composite use of the site and in that event they should be mentioned expressly in the lawful development certificate.

I say nothing about the breaking of motor vehicles dealt with by the Inspector in his paragraphs 38 and 39, nor the vehicle sales dealt with in paragraphs 41 and 47, nor the contractor's plant dealt with in paragraph 50. There is no need to because Mr Wolton, having been successful upon the points with which I have just been dealing, does not need those points to be dealt with. The Inspector may well have been misapplying the word "ancillary" in those cases as well. It is not clear and I express no opinion about it.

The second matter, with which I need to deal, is the degree of precision or particularity to which a certificate of this kind should condescend. As Mr Mould has rightly pointed out, the section is in broad terms and requires, in the most relevant part, only this, at [section 191\(5\)](#) after specifying the land, (b) "describe the use ...". That is all that is required. Guidance is given and I have already read it, and I have already read the judgments in the *Broxbourne* case. Both the guidance and the judgments are to the effect that the certificate should be precise. After paragraph 8.16, in which that is said, various examples are given in the guidance; in particular, there is in paragraph 8.22, by way of example; consideration given to a builder's yard because the expression may encompass builder's yards of entirely different descriptions and sizes; and 8.22 is concerned with sites which are in "mixed or composite use". Sites of that kind are difficult to describe. Indeed, most uses, other than those in the Use Classes Order, are difficult to describe. What is put forward as guidance is that in such cases there may need to be further qualification, or, with respect to the composite use, description which is carefully reflected in the certificate.

The certificate actually issued in this case, to repeat, is scrap yard involving the "dealing, storage and processing of scrap material." I omit the words about the dwelling-houses. That description is not precise and is in fact, inaccurate in that the fact

is, as found by the Inspector on the largely **311* undisputed evidence, that there are also included within the ancillary uses not merely “dealing storage and processing of scrap metal”, but a number of other ancillary uses, including, in particular, because it is the one which Mr Wolton has particularly latched on to, haulage depot, that is the keeping of vehicles and skips for the purposes largely of the scrap yard and, to a lesser extent, for vehicles carrying waste and paper between sites other than the appeal site.

In my judgment it is erroneous and wrong in law for a certificate of this kind, if it is going to condescend to what is called, in the guidance, further qualification, or one could say further particularity, to include some of that particularity, but not all of it.

The effect of what has been done in this case has been not only to defeat the case which was put forward to the effect that all the other uses which are dealt with in the Inspector's report, including the haulage, are to be treated as ancillary rather than primary uses, but further then to omit all reference to them from the certificate even in an ancillary nature. That is apart from the ones which were always accepted; that is to say the dealing, storage and processing.

For that reason also, in my judgment, the application should be allowed. The decision will accordingly be quashed and the matter can now be reconsidered paying full and proper regard to the meaning of the word “ancillary” in this field of the law and also full and proper regard to the guidance given, with respect to the drafting of such a certificate so as to produce a result which is fair to the applicant.

Representation

Solicitors— Kingsley Smith and Company , Kent; Treasury Solicitor .

Order

Reporter —David Stott.

*Appeal allowed with costs. *312*

**Appendix 5: White Horse Park Homes, Weymouth – Appeal
Decision (APP/F1230/X/18/3206065)**





Appeal Decisions

Hearing Held on 22 May 2019

Site visit made on 21 May 2019

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 03 June 2019

White Horse Park Homes, Osmington Hill, Weymouth DT3 6ED

Appeal A: APP/F1230/X/18/3206065

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr H Simmonds (White Horse Park Homes) against the decision of West Dorset District Council.
 - The application Ref WD/D/18/000478, dated 19 February 2018, was refused by notice dated 15 June 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation.
-

Appeal B: APP/P1235/X/18/3206069

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr H Simmonds (White Horse Park Homes) against the decision of Weymouth & Portland Borough Council.
 - The application Ref WP/18/00157/CLP, dated 19 February 2018, was refused by notice dated 15 June 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation application.
-

Decisions

Appeals A & B

1. The appeals are allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Preliminary Matters

2. At the time of the applications, the appeal site fell within the administrative area of two different Councils; West Dorset District Council and Weymouth & Portland Borough Council. Each Council issued a decision in relation to the land within its area. The reasons for refusal were the same in each case. Since the

date of the decisions, the Councils have been replaced by a single local authority. The entire appeal site is now within the area for Dorset Council.

3. The Councils produced a single Appeal Statement covering both decisions as did the appellant. The issues are the same in each appeal. In the circumstances it is appropriate that I deal with the appeals together.
4. There was no description of the proposed development in the original application forms. I have therefore utilised the description in the headings above as it appears in both decision notices and Appeal Forms.
5. The approach to be taken in determining the applications is set out in the 'Lawful development certificates' section of the national Planning Practice Guidance. It states that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. It goes on to confirm that the planning merits are not relevant at any stage in this particular application or appeal process.
6. Whilst the Councils both cited planning policies that it considered to be offended by the proposal, these have no bearing on my decision.

Main Issue

7. The main issue is whether the Councils' refusals to issue a Lawful Development Certificate (LDC) were well-founded. That comes down to whether the proposal would have been lawful for planning purposes on the application date.

Reasons

Background

8. The plan accompanying the Councils' decisions to refuse to issue an LDC identifies two parcels of adjoining land. One parcel is annotated 'Field A' and the other 'Field B'. The applications which have led to the current appeals relates to both parcels of land, the whole of which is outlined in red in each application plan.
9. By way of background, on 27 October 1986 planning permission was granted by Weymouth & Portland Borough Council for "the installation of two additional static caravans and alterations to shower rooms to form laundry and playroom" on the land now described as Field A. The permission was subject to two conditions only; (1) the standard time condition requiring commencement within 5 years (2) the provision of visibility splays. There is no dispute that the permission was implemented.
10. A LDC was subsequently issued on 10 May 2017 under section 192(1)(a) for the proposed "use of the land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation." The LDC also related to Field A only.
11. There is no dispute that the caravans may be of any type within the statutory definition at section 29(1) of the Caravan Sites and Control of Development Act 1960 and that they may be occupied for any type of human habitation.
12. On 3 January 2018 West Dorset District Council issued an LDC for an existing use of Field B under section 191(1)(a) for "the use of the land ... for recreation and amenity use in association with the adjacent caravan park known,

currently, as White Horse Caravan Park.” The LDC was issued on the basis that such use had continued for a period in excess of 10 years prior to 30 May 2017 so as to be immune from enforcement action under section 171B(3) of the 1990 Act.

13. The current application is for an LDC for the proposed use of both Fields A and B for “The use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person’s sole or main accommodation”. In other words, the same use granted by the 2017 LDC but across both fields and not just Field A. There would be no increase in the number of caravans. As proposed, up to 17 caravans could be spread over the two fields or in any other configuration.
14. The new Council maintains that the siting of caravans in Field B is not authorised by the 2018 LDC. Furthermore, as there are currently no caravans on Field B the Council says the proposal would adversely affect the character and visual quality of the sensitive landscape and amount to a material change of use requiring planning permission. Field B lies within an Area of Outstanding Natural Beauty although Field A does not.

Analysis

15. The starting point is to establish the status of the lawful use of the appeal site as certified by the LDC’s.
16. The Council maintains that the lawful use is a mixed use composed of a caravan site and recreation/amenity use. The concept of a mixed use is one of two or more primary uses existing within the same planning unit or unit of occupation. One is not ancillary to the other. The appellant contends that there is a single primary use of the planning unit as a caravan site to which the recreation/amenity use is ancillary.
17. Much of the discussion at the Hearing concerned the meaning of the term “in association with..” in the 2018 LDC. The appellant says it must mean that the recreation and amenity use was ancillary to the caravan site. Ancillary uses are not distinguished by scale, although that may be relevant. The essential feature is that an ancillary use has some functional relationship to the primary use¹. That functional relationship should be one that is normally found. An ancillary use must be carried on in the same planning unit as the primary use.
18. It is common ground that Field A and Field B form a single planning unit.
19. By the time of my site visit Field B had been subject to groundworks with aggregate spread across much of the field and some drainage installed. Prior to this it is agreed that Field B was fairly rough grass suitable for exercising dogs. There had been one bench positioned on the land from where the surrounding view could be admired. It had been separated from Field A by hedging and fencing with a gap allowing access between the two fields. The 2018 LDC had been issued based upon the use of Field B as a recreation and amenity area as established at that time and that is what is relevant rather than current use as it now appears.
20. At the Hearing the Council agreed that recreation and amenity is within the range of uses that could be regarded as ordinarily and reasonably incidental to

¹ Main v Secretary of State for the Environment (1998) 77 P. & C.R. 300; [1999] J.P.L. 195

a caravan site. However, the Council considers that the recreation/amenity use goes beyond what may properly be regarded as ancillary having regard to its layout, scale and form.

21. My attention was drawn by the Council to the judgment of Lord Denning in *R v Axbridge Rural DC*² where the issue arose as to whether the recreational use of land adjoining a caravan site came within the definition of a "caravan site" as set out in section 1(4) of the 1960 Act. It was held that for land to be used in conjunction with land on which a caravan is so stationed it must be used immediately and directly in conjunction with it. Examples were given of land used for a latrine, for a motor car to stand and land laid out as a playground. It did not include waste land over which children or adults may run from time to time. In that case the existing caravan site was found to be the actual land on which the caravan stood and a very small area surrounding it.
22. Be that as it may, it is now too late to assess whether the use of Field B might constitute a "caravan site" for the purposes of the 1960 Act. Its use as recreation and amenity land has already been established "in association with the adjacent caravan park" by the 2018 LDC. The matter turns on what the LDC certifies as lawful.
23. Even if I were able to go beyond the wording of the LDC, the *Axbridge* case does not assist the Council when it would be within the scope of the LDC for the recreation and amenity land to be laid out as a play area. The functional use of the land not only could be ancillary to the caravan site, but the LDC confirms that it is indeed a use associated with the occupation of the adjacent caravan park.
24. If, as the Council suggests, the LDC certifies more than an ancillary use then it follows that the recreational use must be a primary use. The Council acknowledged the use must be one or the other. The words of the 2018 LDC are clear on their face that it certifies only the use of Field B in association with the adjacent caravan park. In my view it cannot be interpreted as certifying the use of Field B as a primary recreational and amenity use because the use must be "in association with" the caravan park. This is consistent with an ancillary use where such rights do not continue after the cessation of the primary use.
25. It is possible for a planning unit to contain two separate and distinct uses³, but that does not correspond with the language used in the LDC. The expression "in association with" may be imperfect, but the words appear in the LDC. It is a legal document and they cannot be disregarded. Those words serve no purpose if the recreation and amenity use is a primary use within a single mixed use.
26. Recreation and amenity are activities that legitimately form part of a caravan site use. The wording of the LDC confirms its function is that of recreation and amenity land used in association with the caravan park and not some separate and distinct use.
27. It must also be borne in mind that at the time the 2018 LDC was granted the planning unit was split between two local authority areas. This explains why only Field B is outlined in red on the accompanying plan and Field A is identified

² [1964] 1 WLR 442

³ *C W Young Ltd v SSETR* [2001] EWHC Admin 141

separately in another colour. The differentiation does not denote a primary use of Field B or the absence of an ancillary link.

28. In my judgement the only reasonable conclusion that can be reached on the wording of the LDC is that there was a functional relationship between the adjoining caravan site and recreation/amenity land which was ancillary to the primary use of a caravan site. That being so the lawful use of both fields is that of a caravan site.
29. The Council refers to *Wipperman & Another v Barking LBC*⁴ as authority that a mixed use is established where more than one use takes place on the planning unit without any primary/ancillary link and no physical separation. *Cocktails Ltd V SSCLG*⁵ is also cited as authority that a change of use to one of the component parts of a mixed use requires planning permission.
30. However, in this case there is not a composite or mixed use of the appeal site, but a primary and ancillary or incidental use. The cessation of an ancillary use does not involve a material change of use. Whilst caravans have not been placed on Field B before now, it forms part of the same planning unit as the caravan site. In this instance there would be no change of use because the lawful use of the entire site is already that of a caravan site and there would be no increase in numbers.
31. In this eventuality, the Council invited me to go on to consider materiality and the effect of the introduction of caravans on Field B in terms of landscape impact as addressed in its Landscape Report. It was unable to point to any judicial authority to support such an approach. The Council makes plain that it does not state that there would be a material change of use by intensification.
32. Instead the Council relies on the Appeal Decision for Greenmeadows Caravan Park⁶. The application was similarly for a LDC for the proposed use of an amenity area for the siting of caravans within an existing caravan park. The appeal was dismissed because the increased number of caravans beyond that permitted by the permission would materially change the overall character of the use to which the land was put and substantially change the visual impact of the site when viewed from a public footpath.
33. The appellant considers the appeal was wrongly decided in light of the subsequent judgment in *Cotswold Grange Country Park LLP v SSCLG*⁷. In that case a planning permission for a caravan park described the number of caravans without imposing a condition to limit the number. It is authority that only a condition can impose a limitation as a matter of law and so a local planning authority can only prevent a non-material change of use as described in the planning permission by way of a condition. It does not mean that planning permission would no longer be required if there is a *material* change of use which was the issue in the Greenmeadows appeal.
34. The Greenmeadows appeal did involve a change from the increase in caravans above the number permitted which prompted the assessment of whether there was a material change of use. The use would remain as a caravan site, but it

⁴ [1966] 17 P. & C.R. 225

⁵ [2008] EWCA Civ 1523

⁶ Appeal ref: APP/G1630/X/12/2184453 dated 18 February 2013

⁷ [2014] EWHC 1138 (Admin)

- involved an intensification of the existing use capable of constituting a material change of use of land. Direct comparisons cannot therefore be drawn.
35. In the Appeal Decisions produced by the appellant the issue of materiality was not before the Inspector.
36. As cited by the appellant, *R (oao Childs) v FSS & Test Valley BC*⁸ is authority that a simple increase in the number of caravans may involve a material change of use. An increase from 4 to 8 caravans was found to be material based on a change in the character of the use and the impact on the immediate surroundings including visual amenity and traffic.
37. In this case, no increase in numbers is sought and there are no limits on the type of caravan or manner of occupation. Up to 17 caravans are certified as lawful by the 2017 LDC for Field A and it is up to 17 caravans in total across both fields that is proposed.
38. Whilst I understand the Councils' concerns over landscape impacts, the simple fact remains that the effect of the 2018 LDC was to confirm the established use of Field B as part of an existing caravan site.
39. For development to occur there must be a "material change of use" as set out in section 55 of the 1990 Act. On an ordinary interpretation of the words it is the change of use that must be material. If the use would remain as per the current lawful use, then no change would take place. That is the scenario here. No new use would be introduced for there to be a change of use, nor would there be any intensification of an existing use. The land established as being in ancillary use forms part of the caravan site. There are no conditions to prevent the use of the ancillary land for the stationing of caravans.

Conclusions

40. For the reasons given above I conclude, on the evidence now available, that the Councils' refusals to grant a certificate of lawful use or development in respect of the use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation were not well-founded and that the appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

KR Seward

INSPECTOR

⁸ [2005] EWHC 2368 (Admin)

APPEARANCES

FOR THE APPELLANT:

Mr Ben Eiser	Planning Consultant
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Robson	of Counsel
Debbie Redding	Development Manager
Katherine Van Etten	Landscape Architect



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 February 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The land forms a single planning unit of which the existing lawful use is as a caravan site. The established recreation and amenity use is ancillary or incidental to the primary use of the land as a caravan site. There would be no increase in the number of caravans. There would not be a material change of use to amount to 'development' for the purposes of section 55 of the 1990 Act.

Signed

KR Seward

Inspector

Date: 03 June 2019

References: APP/F1230/X/18/3206065 & APP/P1235/X/18/3206069

First Schedule

The use of land for up to 17 caravans for the purposes of human habitation throughout the year including as a person's sole or main accommodation.

Second Schedule

Land at White Horse Park Homes, Osmington Hill, Weymouth DT3 6ED

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

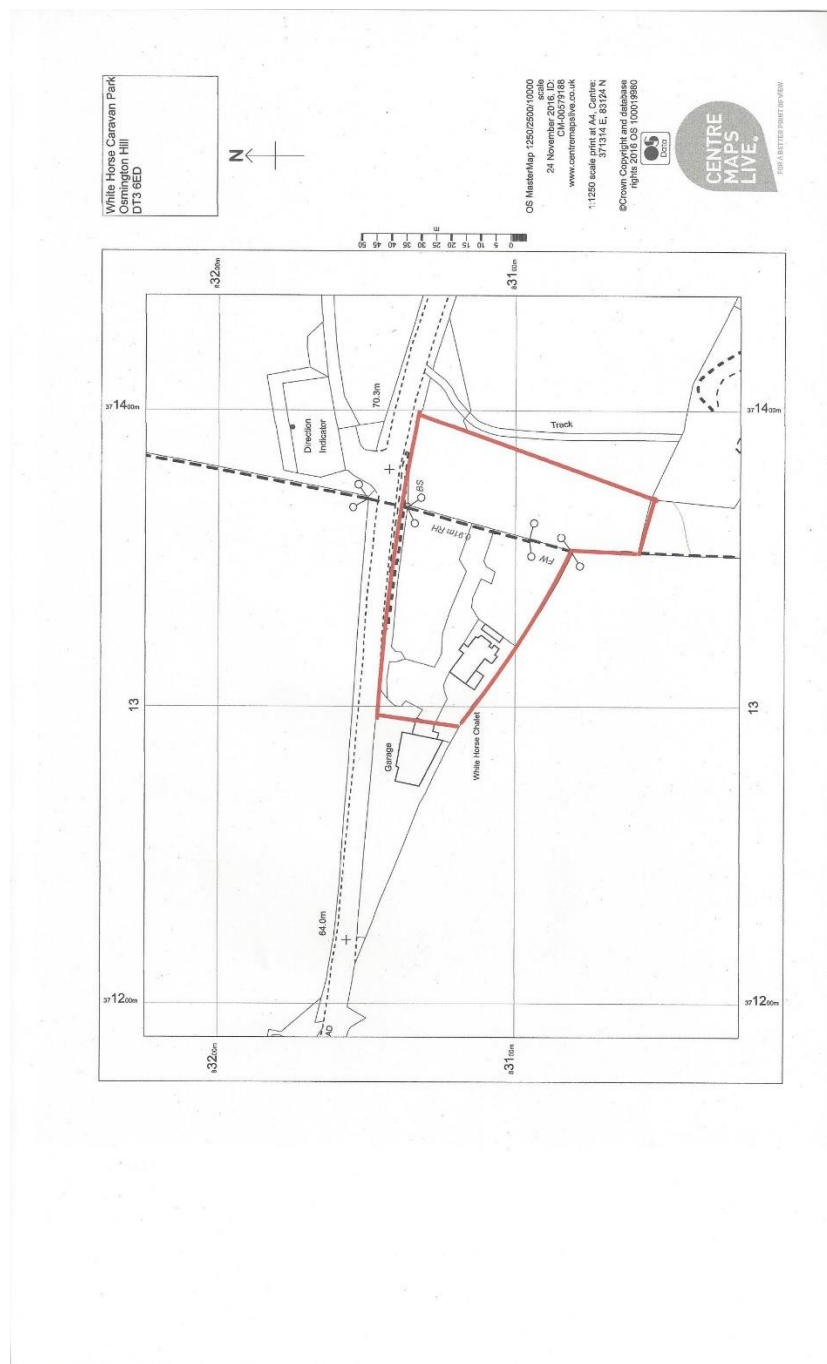
This is the plan referred to in the Lawful Development Certificate dated: 03 June 2019

by K R Saward Solicitor

Land at: White Horse Park Homes, Osmington Hill, Weymouth DT3 6ED

References: APP/F1230/X/18/3206065 & APP/P1235/X/18/3206069

Scale: NOT TO SCALE



Appendix 6: Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited [2012] EWCA Civ 1473

Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited



Positive/Neutral Judicial Consideration

Court

Queen's Bench Division (Administrative Court)

Judgment Date

1 February 2012

CO/7181/2010

High Court of Justice Queen's Bench Division the Administrative Court

[2012] EWHC 277 (Admin), 2012 WL 280432

Before: Mr Justice Ouseley

Wednesday, 1 February 2012

Representation

Mr Matthew Reed (instructed by Solicitor to Hertfordshire County Council) appeared on behalf of the Appellant.

Mr Daniel Kolinsky (instructed by Treasury Solicitors) appeared on behalf of the First Respondent.

Mr Anthony Dinkin QC and Ms Clare Parry (instructed by Mullis and Peake) appeared on behalf of the Second Respondent.

Judgment

Mr Justice Ouseley:

1. Hertfordshire County Council challenges the decision of the Secretary of State for Communities and Local Government given by an Inspector on 7 June 2010, dismissing appeals made by Metal and Waste Recycling Limited against two enforcement notices served by the County Council in respect of an alleged material change of use and operational development made without planning permission on a scrapyards in Wallace Way in Hitchin.

2. Metal and Waste Recycling Limited has operated a scrapyards at the site since the 1970s with the benefit of a planning permission which was not subject to any conditions relevant to the issues here. It replaced an old fragmentiser used for dealing with scrap metal with a new one in 2006, and around that time its throughput increased notably. Lorries arrived at unsocial hours. Dust was created.

3. The County Council served Enforcement Notice A alleging a material change of use without planning permission caused by an increase in throughput and its effect. It was arguing that the material change of use had been caused by an intensification in the use. It required the use to return to operations as they had been conducted before 2006, with various controls imposed, rather resembling conditions, through the medium of steps required to be undertaken to remedy that breach of planning control.

4. Enforcement Notice B alleged that a number of buildings, including the replacement fragmentiser, had been erected without the planning permission they required and should be removed.

5. After an 8-day inquiry and considering the evidence, the Inspector rejected the County Council's argument on the material change of use essentially because most of the significant effects of which residents and local businesses complained were not caused by the increase in throughput. She rejected the County Council's arguments on operational development because the buildings were permitted development, not requiring specific planning permission, and she also concluded, in the light of her decision on Enforcement Notice A, that the scrapyards use was not unlawful.

6. Hertfordshire County Council, with permission, challenges those decisions. Mr Matthew Reed, appearing for the County Council, contends that the Inspector wrongly excluded from her judgment as to whether a material change of use had taken place by way of intensification those effects attributable to changes related to the scrapyards use other than the increase in throughput. The argument on behalf of the second respondent, Metal and Waste Recycling Limited, has involved some consideration of the concept of material change of use by intensification.

7. The County Council contended that the buildings were not permitted development because the scrapyards use should be regarded as falling outside the scope of an industrial process within the meaning of the Town and Country Planning (General Permitted Development) Order 1990, S1 No 418, and the scrapyards use was not lawful.

8. The terms of Enforcement Notice A are important. The breach of planning control as amended alleged:

“... without planning permission the material change of the use of the Land from a scrap-metal yard with an average yearly material throughput of 121,174 tonnes, to a scrap yard, (including as part of this use an end of life vehicle recycling facility), with an average yearly material throughput of 231,716 tonnes, the totality of the new use having a different nature and character from the former use.”

9. The reasons for the issue of the Enforcement Notice refer to the impact which that breach of planning control has had: new buildings were built, including the new fragmentiser “to service this substantial increase in throughput”. The steps which Enforcement Notice A required Metal and Waste Recycling Limited to take to remedy the breach of planning control read like the imposition of a series of conditions. These were intended to limit the monthly throughput, the days and hours of operation, and the number and hours of heavy goods vehicle use. They required the buildings which were said to be required to service the increased throughput to be demolished. Those buildings were also the subject of Enforcement Notice B.

10. Mr Reed, for the County Council, agreed that paragraph 10 of the Inspector's decision letter accurately summarised his submissions. In view of the arguments, I set them out:

“10. The increase in throughput at the time of the installation of the fragmentiser has been used by the Council to describe the extent of the material change of use. However, it accepts that the significant increase in throughput, itself does not amount to a material change of use. The Council

has had regard to the planning consequences of that increased throughput in reaching its conclusion that there has been a material change of use. The essence of the council's case on this ground is that there has been an intensification of use which has had significant effects on the locality. It contends that the proper question to consider is not whether the description of the use remains the same but whether the character of the use falling under that description remains the same. The Council relies upon case law to support its contention that in deciding whether the current use is materially different from the previous use, it is appropriate to have regard to the impacts of the current use in comparison to the former use. The Council's position is that there can be a material change of use by reference only to changes in impacts."

11. Metal and Waste Recycling's submissions in contrast were:

"11. The appellant strongly rejects the Council's submission that there can be a material change of use by reference only to changes in impacts. He accepts that a comparative exercise is necessary based on the effects of the increase in throughput, but submits that the fact that there are more HGVs, general activity, explosions, noise or dust is not sufficient to constitute a material change of use. The question to be asked is whether the effects of that increase in throughput, including effects off-site, are such that there has been a definable change in the character of the use of the land. If off-site effects are being relied upon they must be such as to have caused some fundamental change in the character of the use of the land. Mere intensification, even with adverse side effects, is not enough."

12. Fundamental to the County Council's case is the contention that although the significant increase in throughput was by itself insufficient to constitute a material change of use, the planning consequences of that increase demonstrated a material change of use. Metal and Waste Recycling contended that the adverse impacts from the increase in throughput were not sufficient to demonstrate a material change of use by intensification. A definable change in the character of the use of the land was required.

13. The Inspector's decision letter then considers in sequence the particular impacts relied on by the County Council. In paragraph 68 and following, she set out accurately the effect of a number of authorities cited to her on the scope of intensification. She said:

"In the light of judicial pronouncements, and after considering the approaches of the parties, it seems to me that what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use. It is necessary to first look at the effects of what has been done at the site."

14. She then drew together her unchallenged conclusions of fact and degree, and her conclusions as to the cause of the impacts relied on, in paragraphs 69 to 71. So far as dust was concerned, she said:

“There is no evidence to indicate that any dust created by the site would cause a risk to human health. I have concluded there has been a material increase in dust experienced by local businesses which has emanated from the site since the increase in throughput occurred. However, there is no substantial evidence that the increase in dust identified by local residents at their homes derives specifically from the appeal site or can be directly attributable to the increase in throughput.”

15. She then turned to the explosions caused by the quantity of gas bottles in the waste handled at the site. She said:

“The evidence also does not support the conclusion that the increase in throughput has materially changed the level of impact resulting from explosions at the site.”

16. There had been a significant increase in the number and size of heavy goods vehicles going to the site. She said about that:

“Nevertheless, the size of vehicles and the use of containers to transport material from the site can be attributed to changes in export markets and practices of the haulage industry, rather than the increase in throughput.”

17. The impact, however, of that increase in the number and size of HGVs was more complex. She had previously found that there had also been an increase in HGV movements generally on the road which led to the industrial estate and to the scrapyard. She continued:

“There is additional road traffic noise but the main disturbance caused to residents is by HGV vehicles going to and from the site during the ‘*night time*’ period. The available evidence indicates that this relates to drivers’ working practices and the need to comply with regulations and is not directly caused by the increase in throughput. There has not been any material change in the impact of noise disturbance caused by HGVs that can be attributed to the intensified scrap yard use. The increase in HGVs going to and from the site as a result of the increase in throughput has not given rise to any material harm to the safety of people using the public highway.”

18. , In paragraph 70 she turned to on-site noise:

“As regards the noise emanating from the site, it must be recognised that prior to the carrying out of the noise attenuation measures, the new fragmentiser was initially identified as the source of the elevated noise levels giving rise to complaints. However, the situation is obviously very different with the acoustic shield and the other noise attenuation measures in place. There have been no significant alterations in the noise characteristics of the other on-site activities. The evidence does not reveal any significant adverse planning consequences arising from the noise generated by the on-site operations following the increase in throughput. Taking all the various effects as a whole, they cannot be said, as a matter of fact and degree, to have produced a materially different situation in planning terms than previously existed.”

19. Her overall conclusions are in paragraph 71:

“I concur with the appellant's general proposition that the primary way a planning authority should control the extent of any use is through the imposition of conditions. This site is a long established scrap metal yard which has been operating under an effectively unrestricted planning permission since the 1970s with no conditions attached to control matters such as the number of lorry movements or hours of operation. The effects of the intensification need to be such as to have caused a material change in the character of the use. There have been changes in the effects of the operation upon the surrounding area and, in some instances, the very substantial increase in throughput has been a contributory factor. However, many of the identified impacts upon local residents and businesses derive from extraneous factors and not the increase in throughput. I conclude that the increase in throughput has not had such materially different planning consequences as to take it, as a matter of fact and degree, beyond the normal fluctuations in activity that could reasonably be expected to be experienced by the business. It has not resulted in a change in planning effects of such magnitude so as to cause a material change in the definable character of the use of the land. I find, on the balance of probabilities, that the material change of use alleged by the corrected notice has not taken place. The appeal succeeds on ground (c).”

20. Mr Reed's challenge to her conclusions in relation to intensification proceeds on a narrow front. He contends that in her judgment as to whether a material change of use by reason of intensification had occurred, the Inspector had focused exclusively on impacts caused by the increase in throughput, with the result that she had ignored impacts caused by changes, whether on or off-site, which were caused other than by that increase in throughput: for example, by changes in the number of gas bottles in the arisings, or changes in the drivers' working hours.

21. The Inspector's detailed conclusions show that there were serious noise problems created initially by the installation of the new fragmentiser, largely resolved by later attenuating measures. This was then, in her view, not materially different from what previously had existed (see paragraph 23). She was unable to conclude that the increase in throughput had caused a change in the impact of explosions; yet, as paragraph 29 shows, she thought it likely that there was some increase, not attributable to the increase in throughput. This aspect of the impact was, said Mr Reed, ignored in her assessment of whether there was a material change of use by intensification.

22. In relation to lorry noise off-site, she appears in paragraphs 39 and 40 to conclude that the increase in heavy goods vehicles entering the site is directly related to the increase in throughput, but that the disturbing impact of their noise was attributable to their arrival at the site at unsociably early hours. At paragraph 45 of the decision letter she attributes this impact not to an increase in throughput, but to changes in drivers' working practices, which would have occurred whether the throughput had increased or not; (these are not drivers employed by Metal and Waste Recycling Limited).

23. Accordingly, submitted Mr Reed, that aspect of the impact of change was ignored because it was not attributable to the increase in throughput. The same applies to her conclusion about the increase in the annoying use of beepers. This increase was caused by the turning movements of container lorries, which was not so much a function of the increase in throughput, but of changes in the way in which waste was handled off-site. That impact was accordingly put to one side.

24. The increase in dust, so far as it affected the nearby industrial estate, was caused by the increased throughput. But so far as residents were concerned, she could not conclude that the dust they experienced derived from the site at all or from an increase in throughput.

25. So, reading paragraph 71 of the decision letter with that background, Mr Reed is plainly right to submit that the focus of the Inspector's conclusions on whether a material change of use by intensification had occurred, at least so far as impacts were relevant, focused on the impacts caused by the increased throughput and excluded impacts caused by other changes. Those which were excluded from account in particular included part of the impacts of gas bottle explosions, at least part of which were attributable to the increase in the numbers of such bottles in the arisings anyway, lorry noise in the early hours, which were attributable to the change in drivers' working practices, and the noise of the reversing beepers.

26. The crucial question, however, is whether that approach was an error of law, as Mr Reed submits. He contends that the materiality of a change of use by intensification can, though it may not have to be, judged solely by the change in impacts on or off-site which a use may have, even where the use remains one of the same generic type — here a scrapyards use. The character of the use can be judged and determined by those effects. It is not necessary for them to be attributable to a specific on-site change such as here: the significant increase in throughput which occurred in 2006, at the same time approximately as the new fragmentiser was installed. Hence the Inspector was wrong to exclude those effects which she did exclude from her judgment of whether there had been a material change of use by intensification.

27. Mr Reed submitted that Enforcement Notice A had conveyed the approach he contended for through its use of the words "the totality of the new use having a different nature and character from the former use". He did however accept that that was not how the case was being put to the Inspector.

28. I reject Mr Reed's contentions. I take the last point first because it is significant for both of his arguments in relation to Enforcement Notice A. The material task of the Inspector on this aspect of the Enforcement Notice appeal was to decide whether the matters alleged in the Enforcement Notice constituted a breach of planning control. The allegation in the Enforcement Notice, after argument before me by Mr Reed, may not be as clear as it was to the parties and the Inspector at the inquiry.

29. The former use was the scrapyards use with a particular throughput. The new use was the scrapyards use with the higher throughput. That increase was the material change of use. The significance of the reference to "totality" as encompassing changes unrelated to an increase in throughput, which occurred off-site or which would have occurred on-site anyway to the

same or at least to some degree, was simply not raised before the Inspector. Those changes were not understood by the parties to be relevant of themselves to the material change of use by intensification.

30. It is perfectly clear from the second page of the Enforcement Notice, which refers to the planning reasons behind its issue, that the case was concerned with the effect of the increase in throughput. The issues as recorded and debated before the Inspector, and as judged by her, were whether the effects on or off-site relied on by Hertfordshire County Council were caused by the increase in throughput. That is clear from the record of the County Council's argument in the third sentence of paragraph 10 of the decision letter above, which Mr Reed accepted faithfully recorded his submissions. He took me to his closing submissions in support of his argument, but it is perfectly clear, as he accepted, that they are structured in the same way in order to focus on the effects caused by the increase in throughput.

31. Metal and Waste Recycling Limited focused its own submissions to the inquiry within that same framework, a framework selected by the way in which the County Council sought to present its case on the application to the facts of what it saw as the meaning of its Enforcement Notice. Not surprisingly, that is the framework which the Inspector adopted for her consideration of Hertfordshire County Council's argument that there had been a material change of use by intensification.

32. Hertfordshire County Council lost before her because it lost many of the significant arguments of fact and degree as to whether the effects relied on were wholly or significantly attributable to the increase in throughput. It is perfectly clear that it had thought that the installation of the fragmentiser was the cause of the increase in throughput, and that the amenity impacts which occurred on and off-site were the consequence of that increase in throughput. But it failed on that ground because the evidence of Metal and Waste Recycling Ltd on those matters was preferred.

33. The Inspector looked at those impacts which she concluded were attributable to the increase in throughput, but reached her unassailable and well reasoned conclusion on that point adverse to the County Council.

34. In my judgment, it is not open to the County Council to criticise the Inspector for adopting the basis for decision-making which it had urged upon her, and for failing to adopt a basis which it did not urge upon her. She cannot be said to have misinterpreted the nature of the allegation in the Enforcement Notice, nor to have omitted from consideration material factors to the issue of whether there had been a material change of use as formulated in the Enforcement Notice or as contended for by Hertfordshire County Council.

35. In any event, I am not persuaded that the factors she excluded were material considerations, however the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. A change in the nature of activities on the site, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use other than by way of intensification. But if such changes themselves do not bring about a material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.

36. Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as is necessary to constitute a material change of use, the level at which that activity did or could occur without giving rise to a change of use has to be ascertained. It is only what happens above that no doubt not very clearly defined baseline which can contribute

to the material change of use. In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.

37. I do not doubt that a combination of intensification and other changes in activities can constitute a material change in use; but what could be done without the need for permission would still have to be ascertained. That is how the Inspector approached it. Gas bottle explosions for example would have occurred anyway, as would the use of container lorries and the unsociable hours of the arrival of HGVs outside the site as part of the permitted use. They were not, or largely not, related to the increase in throughput, and so rightly were or largely were excluded from consideration. So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities beyond those which did not require planning permission.

38. Mr Anthony Dinkin QC, for Metal and Waste Recycling Limited, submitted, in support of the Inspector's conclusions, that in effect there had been a degree of intensification falling short of that which could show a material change of use; a material change of use by intensification could not be shown simply by reason of increased impacts, however grave. He pointed out that the County Council had accepted that the degree of increase by itself did not show that there had been a material change of use, and that its argument as to impact on and off-site was the crucial determinant for its argument. The on-site primary or generic use as a scrapyards was unchanged, as the Council had accepted, and there had been no change in the nature or type of activities undertaken on the site. Mr Dinkin rightly points out that the Inspector so concluded at paragraph 67 of the decision.

39. Mr Reed submitted that a material change of use by intensification could be shown by the effect of on or off-site impacts alone. That had happened here, and was why all impacts had to be considered.

40. Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly in paragraph 68 of her decision, as I set out above: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land.

41. I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyards because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land.

42. The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use.

43. I add these words of caution about attempting to broaden material change of use by intensification as a substitute for proper conditions on planning permissions. Although authorities, in the *Court of Appeal for example in Fidler v the First Secretary of State* [2004] EWCA Civ 1295 at paragraph 28, and earlier in, for example, *Lilo Blum v the Secretary of State for the Environment* [1987] JPL2 78 per Simon Brown J, treat the principle of a material change of use by intensification as well

established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.

44. In *Brooks and Burton Limited v the Secretary of State for the Environment* [1977] 1 WLR 1294, Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one.

45. This reflects what Sullivan J said in *R v Thanet District Council v Kent International Airport Plc* [2001] P&CR 2 at paragraph 54:

“It is easy to state the principle that intensification may be of such a degree or on such a scale as to make a material change in the character of a use, it is far more difficult to apply it in practice. There are very few cases of ‘mere intensification’. Usually the increase in activity will have led to some other change: from hobby to business, from part to full-time employment, or an increase in one use at the expense of other uses in a previously mixed use.”

46. The precise description of the existing and changed uses is important. Mere generic descriptions may not always be sufficiently precise to reflect material planning differences. The statutory overlay, for example in relation to generic residential and industrial uses, may now qualify what might have been the role which the concept of intensification may have been thought able to play many years ago. But for all that, the cases have all emphasised the need to identify a material change in the definable character of the use of the land. None of them has suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case.

47. Accordingly, I reject Mr Reed's submission that the Inspector ought to have examined impact alone. She had to examine something else as the starting point for her examination, however much the impacts might have been evidentially relevant.

Enforcement Notice B

48. Mr Reed contended that the fragmentiser constituted operational development for which planning permission was required. The Inspector concluded that it was development permitted under class B(a) in [Part A to Schedule 2 to the GPDO 1995](#). This permits, subject to immaterial exceptions, development consisting of the installation of replacement plant to be carried out on industrial land for the purposes of an industrial process. “Industrial land” means land used for carrying out an industrial process. “Industrial process” is defined in [Article 1\(2\)](#) as a process for or incidental to “(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article”. On the face of it, that is applicable here to the fragmentiser, as the Inspector found, and so the fragmentiser was permitted development.

49. Mr Reed repeats here the argument which failed before the Inspector. He points out that the [Town and Country Planning \(Use Classes\) Order 1987](#), SI No 764, it adopts materially the same definition of “industrial process”. The [Use Classes Order](#)

treats changes of use within the defined use classes as immaterial, including changes within Class B1, light industrial, and within class B2, general industrial. The definition of “industrial process” applies to both of those classes.

50. However, a scrapyards use is explicitly excluded from all schedule classes, including class B1 and class B2 into which it would potentially fall. So a general industrial site cannot become a scrapyards without planning permission. It is illogical then, contends Mr Reed, if a scrapyards is treated as industrial land, or a place where an industrial process is carried on so that it has permitted development rights, but land in a general industrial use cannot change to a scrapyards use without specific planning permission. The same exclusion from the definition of the scope of the [Use Classes Order](#) should apply to permitted development so that scrapyards do not have permitted development rights.

51. I cannot accept that argument. First, Parliament has not put into the 1995 order the exclusion which it put into the 1987 order. That must have been a continuing conscious decision. No basis has been shown for interpreting that later instrument as impliedly incorporating the omitted exclusion — and it must have been deliberately omitted, even if there is no obvious reason for that, according to Mr Reed.

52. Second, there is, in my judgment, a real and obvious difference between treating a change of use from general industrial land to use as a scrapyards as material so that a new scrapyards needs permission, and giving permitted development rights to those scrapyards which already exist. That is what happened here. I accordingly reject Mr Reed's submission on that point, as did the Inspector.

53. It is not necessary to deal with his arguments on whether the scrapyards is a lawful use in the light of the conclusions I have reached in relation to Enforcement Notice A. Accordingly, this appeal is dismissed.

54. MR KOLINSKY: I am very grateful to your Lordship for his judgment. On behalf of the First Secretary of State I would seek an order for costs. The principle and the quantum are agreed, as I understand it. I would invite your Lordship to summarily assess the Secretary of State's costs in the agreed figure of £9,380.

55. MR JUSTICE OUSELEY: Yes.

56. MR DINKIN: May it please your Lordship, I am obliged also for your Lordship's judgment in the matter. My Lord, I do rise to ask your Lordship to consider whether, in the circumstances of this case, there should be some order for the claimant to pay the second respondent's costs. My Lord, I am fully aware of course that normally that is not the rule, two costs orders and so on, and perhaps the circumstances have to be somewhat exceptional to justify it. My Lord, I would respectfully invite your Lordship to consider whether my presence here was justified. Your Lordship has, I think, endorsed much of the submissions that I was making in respect of the material change of use issue as a fundamental point, leaving aside the Inspector's decision as such.

57. So, my Lord, in my submission, an important case for the second respondent. My Lord, I respectfully submit my presence was justified on that point if no other, and that there ought to be a contribution. My Lord, may I respectfully suggest one half? A schedule has been prepared, I do not know whether—

58. MR REED: Quantum is not agreed, so if Mr Dinkin asks for half his costs, I would want to see what that amount is.

59. MR JUSTICE OUSELEY: Half of something that is not agreed.

60. MR DINKIN: There is a schedule prepared.

61. MR JUSTICE OUSELEY: Let us deal with the principle first. I am always interested to see these schedules.

62. MR DINKIN: My Lord, this includes both the permission stage and the current stage, and the grand total is at the end, bottom line, and it is a contribution towards that that I respectfully invite your Lordship to consider in favour of the second respondents.

63. MR JUSTICE OUSELEY: Mr Dinkin, I am not going to make an order for costs in your favour. It is not sufficient, in order to persuade the court to exercise a jurisdiction which it exercises unusually and rarely, to persuade the court that you had a legitimate interest in attending and a perfectly proper role to play in the argument. Respondents in your position usually do have a separate interest from the Secretary of State, and usually bring, if I can put it crudely, something to the party, but that is not an adequate basis for requiring a second set of costs to be paid. I do not think this case brings it sufficiently into an exceptional category to warrant an order for costs in your favour.

64. MR REED: My Lord, I am obliged. My Lord, there is one further order that I would ask the court to make and it concerns the circumstances of an application for permission to appeal. Of course, this is a second appeal, and so if I am to make an application I have to do so before the Court of Appeal. My Lord, there is an issue of course as regards to timing of the transcript. My Lord, I would ask either that we have sufficient time from receipt of the transcript to lodge the application for permission, or if your Lordship is not with us on that—

65. MR JUSTICE OUSELEY: No, I am prepared to give you that. You will have two weeks after receipt of the approved transcript.

66. MR REED: My Lord, I am grateful. Does your Lordship want me to draft that order for the court and have that agreed with the other parties?

67. MR JUSTICE OUSELEY: No, it is a simple order.

68. MR REED: My Lord, that is the only further application that I have.

Appendix 7: Reed v SOS [2014]

C1/2013/0777

Neutral Citation Number: [2014] EWCA Civ 241

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 18 February 2014

B e f o r e:

LORD JUSTICE SULLIVAN

LORD JUSTICE KITCHIN

LORD JUSTICE BEATSON

Between:

REED_

Appellant

v

**THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT & ANOTHER_**

Respondent

DAR Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr M Rudd (instructed by DPA Bar Council) appeared on behalf of the **Appellant**

Mr P Greateorex (instructed by The Treasury Solicitor) appeared on behalf of the

Respondent

J U D G M E N T

1. LORD JUSTICE SULLIVAN: This is an appeal against the order dated 1 March 2013 of Mr Robert Jay QC, as he then was, sitting as a deputy High Court judge, dismissing the appellant's appeal under section 289 of the Town and Country Planning Act 1990 ("the Act") against a decision of an inspector appointed by the first respondent dismissing the appellant's appeal against an enforcement notice issued by the second respondent.
2. The inspector's decision letter is dated 24 May 2012. The inspector was considering, at a six day inquiry, appeals against four enforcement notices, which he lettered A to D. In this appeal, we are concerned only with enforcement notice A, which I will call "the notice".
3. As issued by the second respondent, the breach of planning control alleged in the notice was:

"Without planning permission, change of use of the land from agricultural to use for the stationing of two number static mobile homes, touring caravans for residential use, one number storage container, and one number mobile utility block."

The notice stated that this breach of planning control fell within paragraph (a) of section 191A(1) of the Act. Section 171A provides that:

"1) For the purposes of this Act a) carrying out the 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 173 deals with the contents and effect of enforcement notices. Subsection 1 provides:

"An enforcement notice shall state a) the matters which appear to the local planning authority to constitute the breach of planning control and b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls."

4. In paragraph 7 of the decision letter, the inspector found that the appellant had been granted a personal planning permission on appeal in 2007 which covered part of the land the subject of the enforcement notice. That permission was for a caravan site for one gypsy family. The permission was subject to a number of conditions, they included a condition that the site should not be occupied by any persons other than gypsies and travellers, as defined; an occupation condition limiting occupation of the site to the appellant and his wife or partner and their resident dependant children; a condition limiting the number of caravans to not more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960; and requiring them to be sited in accordance with the positions marked on the application plan.

5. The local planning authority maintained that the 2007 planning permission had not been lawfully implemented (see paragraph 8 of the decision letter). Presumably, this was why the local planning authority alleged that the breach of planning control was a material change of use from agriculture rather than a breach of condition of the 2007 permission. A curiosity of the case was that, over part of the enforcement notice site, there was an equestrian use which had the benefit of a certificate of lawful use. The inspector concluded that the 2007 planning permission had been implemented (see paragraph 14 of the decision letter) and there has been no challenge to that conclusion.
6. The inspector found that there was a mixed use on the site and one element of the mixed use, namely the use for equestrian purposes, had remained unchanged. The only change was from one static and one touring caravan, to two static mobile homes, touring caravans, and a storage container; the storage container was used as a day room and domestic storage for Mr Hume, who was the occupant of the second mobile home (see paragraph 48 of the decision letter).
7. Once it was concluded that the 2007 permission had been implemented and that there had not been a material change of use of the land from agriculture, careful consideration should have been given as to whether what had occurred was a breach of condition as opposed to a material change of use. The inspector recorded in paragraph 15 of the decision letter the submission made on behalf of the appellant, that the second respondent should, in these circumstances, have issued a hybrid breach of condition/change of use enforcement notice.
8. Following his conclusion that the 2007 permission had been implemented and the council's acceptance of the fact that there had not been a change of use of the land from agriculture (see paragraphs 14 and 16 of the decision letter), the inspector corrected the allegation of breach of planning control in the notice to the following:

"Without planning permission, change of use of the land from a mixed use for equestrian purposes and the stationing of one number static mobile home for residential use and one number touring caravan to a mixed use for equestrian purposes and the stationing of two number static mobile homes for residential use, touring caravans and one number storage container."

9. When dealing with the ground C appeal, the inspector also recorded in paragraph 31 of the decision letter that:

"The appellant claimed that the stationing of an additional residential caravan on the land does not amount to a material change of use and that, as a consequence, there has been no breach of planning control."

The inspector's answer to that submission was contained in the same paragraph of the decision letter and was as follows:

"However, the additional caravan amounts to a doubling of the number of residential caravans permitted on the land and I am satisfied on a fact and

degree basis that the alleged material change of use has occurred. Therefore, the matters alleged in the corrected notice constitute a breach of planning control and the appeal on ground C fails."

10. On behalf of the appellant, Mr Rudd submitted that, in concluding in paragraph 31 that the doubling of the number of residential caravans had resulted in a material change of use, the inspector had either a) applied the wrong test and assumed that "mere intensification" amounted to a change of use even if it did not change the character of the mixed equestrian/residential caravan site use of the land, or b) if the inspector had considered whether there had been a change not merely in the number of caravans on the land but in the character of the mixed use, then he did not give any, or any adequate reasons for concluding that there had been a change in character.
11. In support of his submission, Mr Rudd referred us to the decisions of Mr Justice Ouseley and of this court in Hertfordshire County Council v the Secretary of State for Communities and Local Government and Another [2012] EWCA Civ 1473. In that case, the throughput of a scrap yard had almost doubled. The local planning authority issued an enforcement notice, and the Secretary of State allowed an appeal against the enforcement notice on the basis that there had been no material change of use. The local planning authority's appeal against that decision was rejected by Mr Justice Ouseley in the High Court, and on further appeal by this court.
12. Having considered a number of authorities, the Court of Appeal confirmed the test adopted by Ouseley J, namely that while intensification is capable of amounting to a material change of use, for it to do so it must have resulted in "a material change in the definable character of the use of the land" (see paragraphs 9 to 11 of the judgment of Pill LJ with which the other members of the court agreed).
13. Mr Rudd submits that, although the inspector found as a matter of fact and degree that the corrected material change of use had occurred, intensification had not formed part of the local planning authority's case at the inquiry and, moreover, it is common ground that the inspector's decision letter does not mention the concept of intensification, much less, Mr Rudd submits, does it contain any acknowledgement that mere intensification by way of increase in numbers is not sufficient for intensification to amount to a material change of use. There is no recognition in the decision letter that there must be a change in the character of the mixed use, and the inspector does not identify any such change. The only basis for the inspector's conclusion that there had been a material change of use as opposed to a breach of condition, which was not alleged, was that "the additional caravan amounts to a doubling of the number of residential caravans".
14. Mr Rudd rhetorically poses the question, what has the introduction of one residential caravan done to change the character of the mixed use? He submits that, on a fair reading of the decision, the inspector's conclusion was based on the erroneous premise that mere intensification could amount to a material change of use. If the court did not accept that submission then he further submitted that the inspector had not given any reason for concluding, if he did so conclude, that the character of the mixed equestrian and residential caravan site use had changed.

15. The judge dealt with this ground of challenge in paragraphs 80 to 92 of his judgment, which is reported at [2013] EWHC 787 (Admin). In paragraphs 87 to 90 the judge said this:

"87) Put in these terms, the appellant's submission on ground 2 does have a technical and somewhat unattractive quality. The appellant does not and cannot submit that erecting two caravans rather than one could not constitute a material change of use as a matter of law.

88) The inspector did not have regard to the size or location of the caravan for this purpose (that would have been impermissible) he merely had regard to number.

89) I accept Mr Greateorex's submission that materiality is a matter of judgment for the inspector. The inspector after all rejected the section 142(2)(a) appeal, from which it may be inferred that the number of caravans was relevant to the issue of whether planning permission ought to have been granted.

90) I do not accept Mr Rudd's submission that he can draw solace from the decision of the Court of Appeal in Hertfordshire County Council v Secretary of State ... the facts there were somewhat different. There was one and the same scrap yard with a significantly increased level of throughput. Here we have two caravans rather than one."

16. On behalf of the Secretary of State, Mr Greateorex submitted that the point now raised before this court on behalf of the appellant was barely an issue before the inspector, let alone a principal or controversial main issue. Therefore, he submitted, the very brief reasoning in paragraph 31 of the decision letter was perfectly adequate. During the latter part of his submissions he was prepared to go so far as to accept that if there had been what he described as a "proper debate" about the issue before the inspector, then he could see the force of the point made by the appellant in this court.

17. I am unable to accept that this issue was not squarely raised before the inspector. We have a copy of the written final submissions made on behalf of the appellant. While it is true that they are very lengthy and largely concentrate, as might be expected, on the ground A appeal on the planning merits, nevertheless the point was put before the inspector in this way:

"The original permission was for a caravan site for one gypsy family. The corrected allegation alleges a change of use from a mixed use for equestrian purposes and the stationing of one static mobile. Taking the description of the extant permission, the described original use in the allegation is not correct. The use described to which the land is now put is accepted as being factually correct, however it is not accepted that the change amounts to a change of use. In effect the allegation alleges a

change of use from a caravan site/equestrian mixed use to a caravan site/equestrian mixed use. The issue is one of intensification and in these circumstances the appellant does not consider that intensification amounts to a change of use."

18. Mr Greatorex pointed out that that submission was made under the heading of "ground B" in respect of the notice, but in the following paragraph it is made plain that these points apply also in the case of the notice to the ground C appeal in respect of that notice.
19. While it is true that the inspector had four enforcement notices to deal with in a relatively lengthy inquiry, where there was no doubt a mass of factual material, it seems to me that once he had himself concluded that the 2007 permission had been implemented and the local planning authority had accepted that there had not been a material change of use from agriculture to a use for stationing caravans, that that inevitably raised the vital question: whether the breach of planning control was a breach of condition or development without permission. It is plain from the inspector's decision at paragraphs 15 and 31 that this very issue was raised on behalf of the appellant and that it was contended that adding an additional residential caravan did not amount to a material change of use. Those submissions are expressly recorded in the decision itself.

The points having been raised, they had to be addressed by the inspector.

20. When he was considering the ground C appeal the inspector had to correctly direct himself as to the test to be applied if he was to conclude that an increase in the number of caravans on the site had been such as to amount to a material change of use. The inspector, as I have mentioned, did not refer to intensification in the decision. That would not necessarily have been fatal if it had been plain from the decision that he had correctly directed himself, but the inspector did not expressly conclude that there had been a change in the character of the mixed use. On the face of the decision, the character of the mixed use remained the same for equestrian purposes and as a caravan site for gypsies.
21. If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.
22. Mr Greatorex submitted that, rather than focussing on the inspector's decision, we in this court should be concerned with the judge's reasoning. If one looks at the judge's reasoning, it seems to me that it very largely endorses that of the inspector's, so that if the latter is defective then so would have been the reasoning of the deputy judge. But looking a little more closely at paragraphs 88 to 90 of the judge's judgment, in

paragraph 88 the judge confirms what Mr Rudd submits, that is to say that the only matter to which the inspector had regard when deciding whether there was or was not a material change of use was the number of caravans. That would suggest that the inspector was adopting the erroneous - mere intensification amounts to a material change of use - approach.

23. If one then turns to paragraph 89 of the judgment, in which Mr Greateorex's submission that materiality was a matter of judgment for the inspector was accepted, there is no dispute with that proposition so far as it goes but in deciding the issue of materiality as a matter of planning judgment, the inspector had to correctly direct himself. The question was not simply whether the number of caravans had increased, it was whether the definable character of the mixed use had materially changed.
24. In paragraph 89 the deputy judge referred to the fact that the inspector had rejected the appeal on ground A, that is to say the appeal on the planning merits. The difficulty with that conclusion, in my judgment, is that if one looks at the way in which the inspector addressed the planning merits and the impact of the caravans on the site, it is plain from paragraph 50 of the decision that he was concerned with the fact that one of the permitted caravans had been replaced by a larger mobile home which had been placed in a more visually prominent position on the site, where it was more clearly visible.
25. The inspector also considered matters which were the subject of the other enforcement notices, that is to say the impact of fencing, hard standing and lamp posts. All of those matters were plainly relevant for the purposes of the ground A appeal but they did not go to the key question on the ground C appeal: had there been a change in the character of the mixed equestrian/caravan site use of the site?
26. Turning to paragraph 90 of the deputy judge's judgment, I would respectfully disagree with his conclusion that the Hertfordshire case could be distinguished on the basis that in that case there was one and the same scrap yard whereas here we have two caravans rather than one. Here, we have two caravans rather than one caravan on the same caravan site. In Hertfordshire one had a scrap yard which had virtually doubled in its output. I therefore do not consider that Hertfordshire can be distinguished on the basis adopted by the deputy High Court judge. Moreover, the underlying principle which emerges from Hertfordshire, namely that mere intensification is not sufficient if it falls short of materially changing the definable character of the use of the land, is a principle which was directly applicable to the circumstances of this case as soon as the inspector had decided to correct the allegation of breach of planning control in the notice in the manner that he did.
27. Mr Greateorex sought to persuade as that, unlike the kind of permission that might have applied in the scrap yard case, where there is a general permission for a type of use, the permission given on appeal in the present case was a very narrow one. He submitted that the permission had to be read as a whole and that included the conditions which meant that the permission was not simply a permission for a caravan site for a gypsy family, but it was a caravan site very tightly hedged about in terms of who could occupy the caravans, the number of caravans, their position on the site and so on and so

forth. It seems to me that that submission confuses matters which might well have been relevant if the alleged breach of planning control had been a breach of condition, with the breach of planning control that was actually alleged in the notice as corrected by the inspector: a material change of use. The inspector was simply concerned with whether there had been a material change in the character of the mixed equestrian and caravan site use.

28. For these reasons, whether one focuses on the judge's reasoning or on the inspector's reasoning in paragraph 31 of the decision, I for my part am left in no doubt that the inspector did apply the wrong test, namely a mere intensification test, and that therefore this appeal should be allowed.
29. LORD JUSTICE KITCHEN: I agree.
30. LORD JUSTICE BEATSON: I also agree.

Appendix 8: The Smithy, Brigdnorth – Appeal Decision (APP/J3205/X/09/2099134)





Appeal Decision

Inquiry held on 25 November 2009
Site visit held on 26 November 2009

by **Derek Thew** DipGS MRICS

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
4th January, 2010.

Appeal Ref: APP/J3205/X/09/2099134 The Smithy, Hampton Loade, Bridgnorth, WV15 6HD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nino Lee against the decision of Bridgnorth District Council (now Shropshire Council).
- The application ref. 08/0627, dated 28 August 2008, was refused by notice dated 9 January 2009.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use as a residential caravan site accommodating 6 caravans.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

Reasons

Planning & Licensing Background

2. The application relates to land, with an area of about 0.6ha, situated on the eastern bank of the River Severn and in the hamlet of Hampton Loade. The land currently accommodates a twin-unit residential mobile home which conforms with the statutory definition of a 'caravan' as set out in s.29(1) of the Caravan Sites & Control of Development Act 1960, and section 13(1) and (2) of the 1968 Caravan Sites Act.
3. The siting on land of a caravan used for residential purposes is subject to the provisions of both the 1960 Act and the Town & Country Planning Act 1990. For the purposes of both Acts the expression 'caravan site' 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 1(4) of the 1960 Act). This definition is applicable to land at 'The Smithy', and so all or part of that land amounts to a caravan site for the purposes of both Acts.
4. Land shall not be used as a caravan site unless the occupier holds a site license issued under Part 1 of the 1960 Act. Furthermore such a license may only be issued by a local authority if a planning permission has previously been granted, under the 1990 Act, for that use of the land. Consequently in detailing the current lawful use of land at 'The Smithy' it is appropriate to have regard to the provisions of both Acts.

5. In relation to the 1990 Act, on 4 June 1957 planning permission (no.13530) was granted for the "use of land for the stationing of a caravan" at 'Riverside', Hampton Loade. The plan of the locality submitted with the application does not delineate an application site. Rather that drawing shows, marked freehand, a circle with an 'X' inside and describes this as "present site of caravan...". The location of that symbol broadly approximates to the position of the mobile home currently on the land. As such 'Riverside' can be taken to be the name by which 'The Smithy' was formerly known.

6. The 1957 scheme was described in the application form as follows:

" No actual development is to take place beyond the placing of one 4-berth caravan on a portion of the land mentioned, to be used:

(a) by applicant and his family & (PH Act 1936)

(b) seasonally by others at holiday times by license of applicant."

On the basis of this wording I am satisfied the intention was for the caravan to be used for residential purposes, and I understand that to be the use to which any caravan thereafter sited upon the land has been put.

7. With regard to the 1960 Act, between 1957 and 2007 a total of 14 site licenses were issued by the local authority in respect of land at what is now 'The Smithy'. Thirteen of the licenses have no plan attached to them and identify the land to which they relate only as 'OOS Salop LXV 11.9 Field no.199'. There is no evidence before me to identify the extent of that parcel of land. The fourteenth site license is dated 10 August 2007 and was issued to Mr & Mrs A J Crupton at 'The Smithy', Hampton Loade. Schedule 1 of the license states that "only 1 fully serviced park home shall be stationed on the site for residential purposes as permitted in planning permission 13530". The area of land to which that license relates is defined on a plan. That area includes the site access and the central portion of the current application site. It excludes the walled remains of the former Hampton Loade Ironworks on the southern portion of the application site and the previously overgrown area on the northern portion of the application site.

8. In summary, therefore, 'The Smithy' is a lawful caravan site with planning permission for the siting there of one residential caravan. As to the physical extent of the lawful planning unit to which that use is attached, it was agreed at the inquiry that it should be taken as the land defined on the plan attached to the 2007 site license. On that basis, it is the reduced area of land described in the preceding paragraph, rather than the whole application site, to which I have had regard in determining this appeal. A corrected site plan is accordingly appended to this decision.

Consideration of the Appeal Proposal

9. Section 191(2) of the 1990 Act provides that:

For the purposes of this Act uses and operations are lawful at any time if—

- (a) *no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) *they do not constitute a contravention of any of the requirements of any enforcement notice.*

Lawfulness is, therefore, determined under the Act on the basis of whether enforcement action may or has been taken in respect of the use or operation in question. Such action can only be taken pursuant to a breach of planning control. Consequently, in order to determine whether increasing the number of caravans at 'The Smithy' from 1 to 6 would be lawful, it is necessary to determine whether enforcement action could be taken if such an increase were to occur, and this requires an assessment of what constitutes a breach of planning control for the purposes of the 1990 Act.

10. Section 171A(1) of the 1990 Act describes a breach of planning control as amounting to either:

- (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."*

11. With regard to sub-section (b), no conditions were attached to the 1957 planning permission. As such, any increase in the number of caravans on the land would not amount to a failure to comply with any condition. Furthermore, in the context of this sub-section, the word '*limitation*' refers only to a time limitation imposed by a development order; and that is not applicable in this case. Consequently, any increase in the number of caravans on the land would not contravene the provisions of section 171A(1)(b) of the 1990 Act.

12. In the light of the above finding, any increase in the number of caravans on the land would only be in breach of planning control if I were to conclude that it amounted to the "*carrying out development without the required planning permission*" (section 171A(1)(a)). For the purposes of the 1990 Act the word "*development*" means either the carrying out of operational works or the making of any material change in the use of land or buildings. In the context of the current appeal I need to consider whether the proposed increase in the number of caravans from 1 to 6 would amount to a material change in the use of the land.

13. I am mindful that the 1957 planning permission was for the use of the land for the stationing of one caravan. That was what the applicant in 1957 wanted and that is what was granted. But it would be wrong to conclude that the proposed increase in numbers would amount to a material change of use of the land just because it differed from what was permitted in 1957. Rather it is necessary to look beyond the wording used in 1957 and to consider what constitutes the making of a material change of use. I draw support for this approach from the judgement in I'm Your Man Ltd-v-Secretary of State for the Environment [1998] 4PLR107.

14. If the number of caravans on the land were to be increased from 1 to 6 then there would be an intensification in the scale at which the use operates. Whether or not intensification can amount to a material change of use was considered by Justice Simon Brown in Lilo Blum-v-Secretary of State for the Environment & the London Borough of Richmond upon Thames Council [1986] JPL 278, as follows:

"It is well recognised law that the issue of whether or not there has been a material change of use falls to be considered by reference to the character of the use of the land. It is equally well recognised that intensification is capable of being of such a nature and degree as of itself to affect the definable character of the land and its use and thus give rise to a material change of use. Mere intensification, if it falls short of changing the character of the use, would not constitute a material change of use."

These words summarise what I regard as the correct approach to intensification. A proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use.

15. The existing mobile home is located fairly centrally within the corrected appeal site and the remainder of the site is laid-out predominantly as a landscaped garden for occupants of the unit. The mobile home is visually prominent, and its residential nature and use are major determinants of the site's overall character and appearance. When planning permission was granted in 1957 it was probably envisaged there would be just one modest caravan on a large open site rather than something markedly more intensive. But what was permitted accords with the legal definition of a caravan site, and what currently exists is a low-key caravan site.
16. If the number of mobile homes or caravans on the land were to be increased from 1 to 6 then I accept the appearance of the site would change. There would be more structures on the land, more hard surfacing, more activity, more traffic and more general paraphernalia of day-to-day living. But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site and, in my view, that is the character it would have with the additional caravans there. The proposed increase would not result in a material change in the nature of the use that is made of the land. It would simply be more of the same use. As a result, I consider the siting of 6 residential caravans on the land would not amount to a material change of use from what was permitted in 1957. I draw support for this view from the comments on the subject of intensification made by Lord Justice Donaldson in Royal Borough of Kensington and Chelsea-v-Mia Carla Ltd [1981] JPL 50.
17. In summary, therefore, I am satisfied that an increase in the number of caravans on the land from 1 to 6 would not contravene any of the provisions of section 171A(1) of the 1990 Act and, as such, would not be in breach of planning control. As set out in paragraph 9 above, a use of land which is not

in breach of planning control and against which no enforcement action can be taken is lawful.

18. In reaching this finding I have given careful consideration to the circumstances in Regina (on the application of John Childs)-v-First Secretary of State & Test Valley Borough Council [2005] EWHC 2368 (Admin). In that case the site had been certified, pursuant to section 191 of the 1990 Act, as a residential caravan site for 4 caravans and the appellant sought a further certificate, pursuant to section 192 of the 1990 Act, to confirm the lawfulness of increasing the number of caravans to 8 or more. This further certificate was refused by the Council and that decision was upheld both on appeal to the Secretary of State and in the High Court. The basis of these decisions was that the proposed increase in the number of caravans would materially change the character of the land from that of a generally little-used "open field in an undulating landscape, characterised by open agricultural land" into a developed site "quite clearly used for the siting of residential caravans". This case demonstrates that a proposal to increase the number of caravans on a piece of land can be found to constitute a material change of use of that land. But, bearing in mind the nature of the site in the Childs case, it seems to me the circumstances were markedly different from those I have to consider. In paragraph 15 above I have described how the existing mobile home is visually prominent, and how its residential nature and use are already major determinants of the site's character and appearance. That contrasts markedly with the Childs case where the site was essentially an open field. In view of the differences in the nature of the sites, I am satisfied it is reasonable for me to reach a conclusion on the current appeal different from that in the Childs case.

19. I have also had regard to the concerns of neighbours, particularly in relation to the adequacy of the access road that serves the land. Between the River & Rail Public House and the site, vehicular access is by a narrow private lane that runs close to existing residential properties. I accept that this lane is poorly-suited to accommodate vehicular traffic. But I do not regard the additional vehicle movements likely to arise from 5 additional caravans on the appeal site as sufficient to constitute a material change to the character of the permitted use.

20. I have also taken into account the fact that parts of the site are subject to flooding from the River Severn. However, I do not regard that factor as pertinent to my consideration of the character of the use that is made of the land.

Conclusions

21. For the reasons given above I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of use of land at The Smithy, Hampton Loade, Bridgnorth, as a residential caravan site accommodating 6 caravans was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Derek Thew - Inspector

APPEARANCES

FOR THE APPELLANT:

M Willers	Counsel, instructed by Philip Brown Associates
<i>He called</i>	
P Brown	Philip Brown Associates, Rugby, CV21 2QX

FOR THE LOCAL PLANNING AUTHORITY:

N Blackie	FBC Mamby Bowdler LLP
<i>He called</i>	
J Hayes	Local resident
R Brown	Local resident
R Ibberson	Local resident
Mrs S Jones	Planning Officer, Shropshire Council

INTERESTED PERSONS:

D Goulding	Resident of Sutton Coldfield
R Whittle	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Letter of notification and list of persons notified
- 2 Acreage of application site
- 3 Amended application site
- 4 Bundle of case law from appellant
- 5 Glamorgan CC -v- Cater [1962] 3AllER 866
- 6 Note re case law handed in by Council at site visit



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 28 August 2008 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On 4 June 1957 planning permission no.13530 was granted for the use of the land for the stationing of a caravan. The use of the land as a residential caravan site accommodating 6 caravans would not amount to a material change from that permitted use.

Derek Thew
Inspector

Date 4th January, 2010.
Reference: APP/J3205/X/09/2099134

First Schedule

Residential caravan site accommodating 6 caravans

Second Schedule

Land at The Smithy, Hampton Loade, Bridgnorth, WV15 6HD

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use is only conclusively presumed where there has been no material change before the use is instituted in any of the matters which were relevant to the decision about lawfulness.

philip brown

ASSOCIATES LTD



Plan

CHARTERED TOWN PLANNERS
& DEVELOPMENT CONSULTANTS
This is the plan referred to in the Lawful
Development Certificate dated: 04.01.2010

by Derek Thew DipGS MRICS

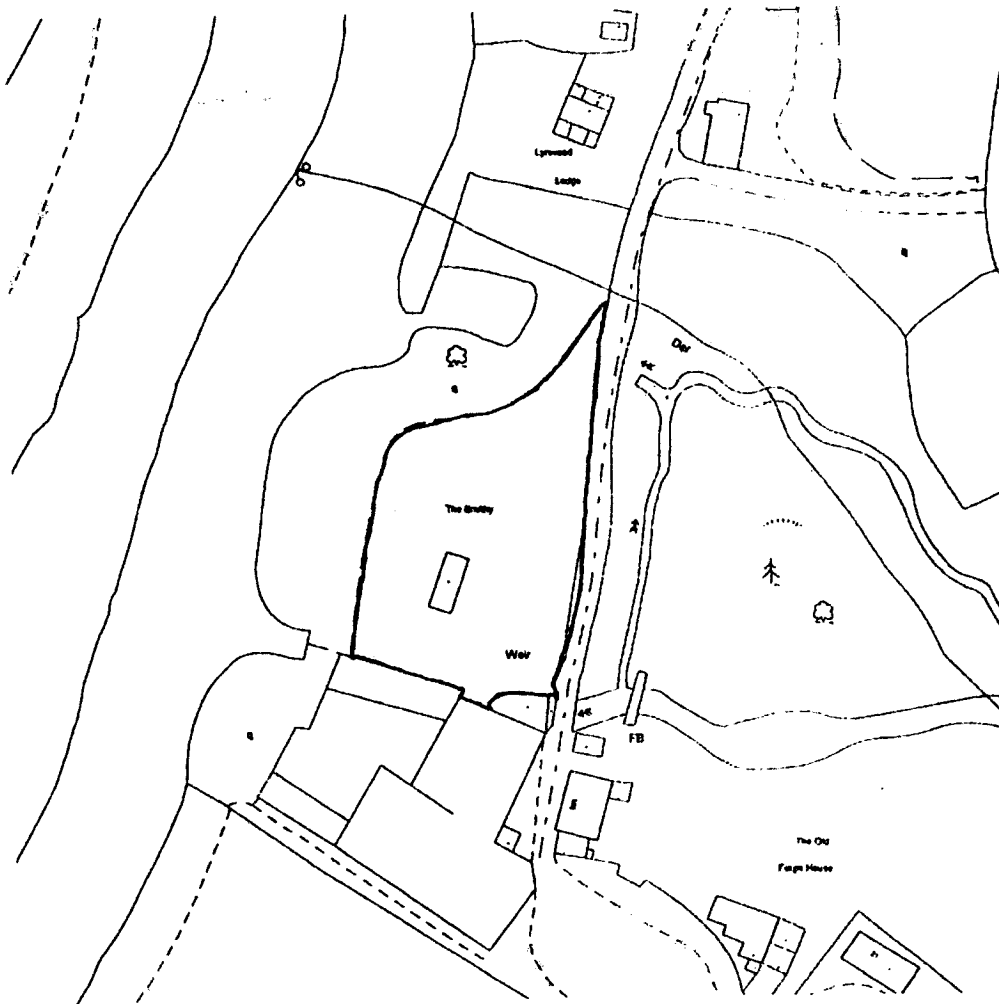
Land at The Smithy, Hampton
Loade, Bridgnorth, WV15 6HD

Reference: APP/J3205/X/09/
2099134

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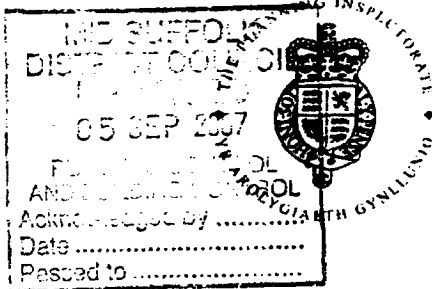
Scale:



IMPORTANT NOTES - SEE OVER

**Appendix 9: Greenacres, Suffolk – Appeal Decision
(APP/W3520/X/07/2039698)**





Appeal Decision

Hearing held on 29 August 2007

Site visit made on 29 August 2007

by Neil Roberts BA DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Date: 4 September 2007

Appeal Ref: APP/W3520/X/07/2039698

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr M Jay against the decision of Mid-Suffolk District Council.
- The application Ref 1869/06/LDCP, dated 7 August 2006, was refused by notice dated 8 December 2006.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is increase in the number of caravans on a lawful caravan site from 6 to 12.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. In this case the burden of proof rests with the appellant to demonstrate that, as a matter of fact and degree, an increase in the number of caravans on the site from 6 to 12 would not constitute a material change of use, and would thus be lawful.

Reasons

2. The judgement in *I'm Your Man Ltd v Secretary of State for the Environment and N Somerset DC* [September 1998, CO/728/98, R Purchas, Deputy Judge] is directly relevant to this appeal. That judgement is concerned with whether the description of development in an appeal decision as being for a temporary period of 7 years itself acted as a limitation on the scope of the permission granted. It was held that, in the absence of a condition on the planning permission requiring cessation of the use after 7 years, the permission granted was a permanent one. In my view the judgement in *I'm Your Man* has general application against reliance on the description of development on a planning permission as some form of limitation of the development permitted. In the case before me the development permitted by planning application 559/84 is thus not restricted to the siting of 6 caravans, the permission containing no condition restricting the number of caravans.
3. The judgement in *Childs v First Secretary of State and Test Valley BC* [Q.B.D., 18 October 2005, J Goudie, Deputy Judge] establishes the principle that an increase in the number of caravans on a site cannot be said to be incapable of

constituting a change of use. By reference back to the judgement in *Brooks and Burton Ltd v Secretary of State for the Environment and Dorset CC*, it was held that in assessing whether there has been a material change of use account has to be taken of the character of the use of the land, including factors such as the planning consequences and environmental impact of any particular use. Whether such a change is a material change of use is then a matter of fact and degree to be determined in each case.

4. In this case it was agreed at the Hearing that the site is well screened at all times of the year by a dense high hedge. Any increase in the number of caravans would not be apparent from outside the site. There would thus be no visual impact on the character and appearance of the area. The caravans would be occupied for residential purposes in a manner similar to occupation of the existing caravans. In that sense there would be no change in the nature and character of the use. If occupants of the additional caravans pursued ancillary business activities on the site, that too would mirror what already takes place, which is typical of a gypsy site. I would add that the physical limitations of the site, particularly after 6 extra caravans were introduced, would constrain the extent to which there could be an intensification in business activities. I doubt if a change in the character of the overall use of the site would arise.
5. It may be that there would be some increase in vehicular movements, though that is not certain as families already on the site could, for example, introduce a touring caravan which would simply provide additional living space for the family when it was not used for touring. In any event the local road network, though including relatively narrow lanes, serves the population and businesses, including many farms, of a relatively wide area. From my observations the network is far from bereft of traffic. In that situation, even taking the worst case of 6 additional families living on the site, I feel any extra vehicular movements generated would be barely perceptible and would not constitute a change in the character of the use.
6. In my judgement the planning consequences and environmental impact of an increase from 6 to 12 caravans on this lawful residential caravan site would not be such as to change the character of the use of the land. On that basis I consider that such an increase in the number of caravans would not, as a matter of fact and degree, amount to a material change of use.
7. I have considered other appeal decisions drawn to my attention. However, I have determined the appeal on its own merits on a fact and degree basis.
8. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an increase in the number of caravans on the lawful caravan site from 6 to 12 was not well-founded, and that the appeal should succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

9. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the extent of the proposed use which I consider to be lawful.

Neil Roberts

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA MRTPI Principal, Philip Brown Associates Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Matthews MA Planning Officer
Mr R Vincent DipTP MRTPI Planning Officer

DOCUMENTS

- 1 List of persons present at the hearing



Lawful Development Certificate

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email: enquiries@pins.gsi.
gov.uk

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 7 August 2006 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The increase in the number of caravans from 6 to 12 on the lawful caravan site would not, as a matter of fact and degree, constitute a material change of use of the land.

Signed

Neil Roberts

Inspector

Date 4th September, 2007.

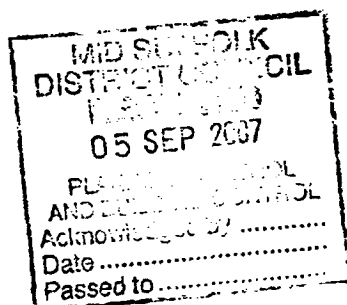
Reference: APP/W3520/X/07/2039698

First Schedule

Increase in the number of caravans on a lawful caravan site from 6 to 12.

Second Schedule

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk.



NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness



Plan

This is the plan referred to in my decision dated:

by Neil Roberts BA DipTP MRTP2

Land at: Greenacres, Mill Road,
Wetheringsett-cum- Brockford,
Suffolk

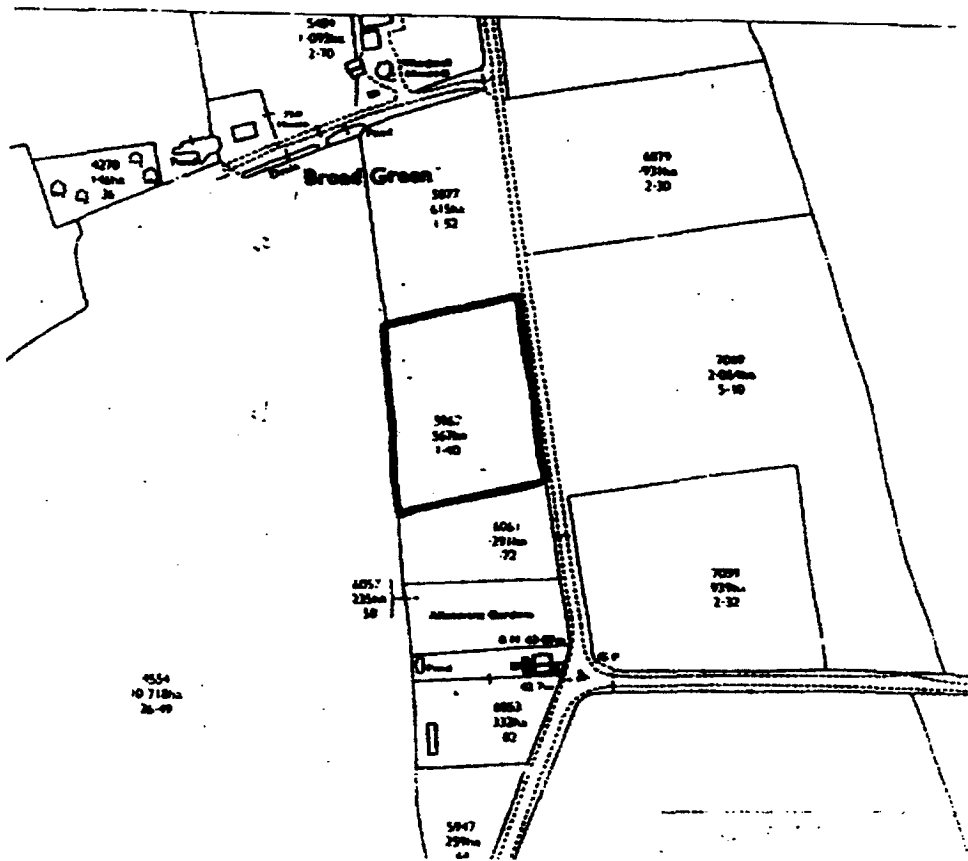
Reference:

APP/W3520/X/07/2039698

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Scale:



4th September, 2007.

**Appendix 10: Cannisland Park – Appeal Decision
(APP/B6855/X/18/3213425)**



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 29/11/18

gan Richard E. Jenkins BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 20.02.2019

Appeal Decision

Site visit made on 29/11/18

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 20.02.2019

Appeal Ref: APP/B6855/X/18/3213425

Site address: Cannisland Park, Parkmill, Swansea, SA3 2ED

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Cunningham against the decision of City and County of Swansea Council.
 - The application Ref: 2018/1552/PLD, dated 12 July 2018, was refused by notice dated 7 September 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is the use of land for the siting of 15 additional caravans.
-

Decision

1. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the proposed use which is considered to be lawful.

Main Issue

2. This is whether the Council's decision to refuse to grant a Lawful Development Certificate was well-founded.

Background and Preliminary Matters

3. The appeal relates to a well-established caravan park located off the A4118 near the settlement of Kittle in the Gower Area of Outstanding Natural Beauty (AONB). The caravan park already contains 45No. mobile homes (hereinafter referred as the existing caravans) with the northernmost part of the appeal site (referred in the evidence as the northern land) used for purposes ancillary to the wider caravan park. The current proposal seeks a Lawful Development Certificate (LDC) for the use of this northern land for the siting of 15No. caravans.
 4. I have not been provided with a copy of the original planning permission for the caravan park, although it is understood that permission was granted in 1965 for the siting of residential caravans on the land. I have not seen any plan associated with this grant of planning permission or any planning conditions imposed therein. However, it appears to be common ground that the permission only related to the area of land currently occupied by the existing caravans and not the northern land.
-

5. Notwithstanding the fact that the northern land was outside of the scope of the 1965 planning permission, the Local Planning Authority (LPA) issued an LDC in July 2017 in respect of the land located to the north and north-west of the existing caravans (hereinafter referred as the July 2017 LDC). For the avoidance of any doubt, that LDC related to the northern land referred above, but also a substantial area of land to the north-west of the existing caravans. In granting the July 2017 LDC, the LPA confirmed that: *"Sufficient evidence has been provided to confirm that, on the balance of probability, the buildings, sewerage treatment plan, soakaway, access road, storage areas and amenity areas (located within the land subject of the application) have been used for purposes which serve, and are ancillary to, the adjacent caravan park for a period of time in excess of 10 years"*.
6. A subsequent application for an LDC was submitted in December 2017 to certify that the northern land that forms part of the current appeal site could lawfully be used for the siting of 15No. static caravans (hereinafter referred as the December 2017 LDC application)¹. That application was refused by the LPA in July 2018 on the basis that insufficient evidence had been provided to demonstrate that the land could be lawfully used for the siting of 15No. static caravans without the need to apply for planning permission. The current appeal proposal is effectively a resubmission of the December 2017 LDC application, although the current proposal is supplemented by additional evidence that includes a legal opinion which concludes that, in the absence of any evidence to indicate that there was a condition or other restriction on the 1965 permission which prevents the site from being used for 60No. caravans, the proposed development would be lawful.

Reasons

7. The Council contends that, in the absence of any documentation to confirm the boundary and unrestricted nature of the 1965 planning permission, the proposed increase in the number of caravans could not be implemented without the need for planning permission. In coming to such a conclusion, it refers to the fact that the burden of proof lies with the appellant in such cases. However, whilst I acknowledge such a well-established principle, the courts have also held that an applicant's own evidence does not need to be corroborated by independent evidence and that, if the LPA has no evidence of its own to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse an application for an LDC. It is within this context that I shall consider this appeal.
8. The evidence appears to indicate that the caravan park has been operated on the basis of an unrestricted planning permission for a significant period of time and I have not seen anything to suggest that the 1965 permission incorporated any planning conditions. It is on the basis of such information that I concur with the appellant's contention that the probability is that there is no restriction on the number of caravans located on the land occupied by the existing caravans. It cannot be ignored however, that the parties are in agreement that the 1965 permission did not relate to the northern land referred above.
9. The July 2017 LDC is however a significant material consideration, not least because it confirmed that the northern land subject of this appeal is lawfully in use for purposes ancillary to the adjacent caravan park. The Caravan Sites and Control of Development Act 1960, defines a caravan site as land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with the land on

¹ LPA Ref – 2017/2659/PLD

which a caravan is stationed, specifically noting that a caravan site must form both the land on which the caravans are stationed and any ancillary land, with no differentiation between the two.

10. Within this context, I was able to confirm at the time of my site inspection that the northern land sits within a wider field that encloses the existing caravan park, with its northernmost boundary comprising a mature and well-established border. It was also notable that the northern land is already an integral part of the caravan site with an existing internal access road dissecting the site and refuse disposal and amenity areas in use. It is notable that the proposed development would represent a 33% increase in the numbers of caravans relative to the existing situation. However, as set out above, the probability is that the 1965 permission did not incorporate a restriction in terms of the number of caravans and, even if it did, it would not apply to the wider area comprising the northern land.
11. It is common ground between the parties that the proposed development would not constitute a change of use of the land, with the Council stating in its evidence that the northern land forms part of the same planning unit as the land originally granted planning permission in 1965. In light of my findings on site, I have no reason to come to a different conclusion on such a matter. Indeed, the development would not result in materially different planning circumstances to that currently, or potentially, found at Cannisland Park and, as a matter of fact and degree, the development would not result in such a change to the definable character of the use or area that it would result in a material change of use. In coming to this conclusion I have had full regard to the impact of the development on other uses and premises, including those relating to amenity and traffic. I am also satisfied that such a finding is consistent with the principles established in the judgements referred within the evidence, including the Reed², Metal and Waste Recycling³ and Childs⁴ cases.
12. For these reasons, and having considered all matters raised, I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use of land for the siting of 15 additional caravans was not well-founded and that the appeal should, therefore, succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended accordingly.

Richard E. Jenkins

INSPECTOR

² Reed v the First Secretary of State for Communities and Local Government & Another [2014] EWCA Civ 241

³ Hertfordshire County Council v The Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd [2012] EWCA Civ 1473

⁴ R (oao of John Childs) v First Secretary of State and Test Valley BC 2005 EWHC 2368 Admin

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (WALES)
ORDER 2012: ARTICLE 28

IT IS HEREBY CERTIFIED that on 12 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would fall within the definition of a caravan site and, by virtue of the combination of the scale of the proposed development and the site specific circumstances, the use of the land described within the First Schedule would not amount to a material change of use.

Signed:

Richard E. Jenkins
INSPECTOR

Date

Reference: APP/B6855/X/18/3213425

First Schedule:

Use of land for the siting of 15 additional caravans

Second Schedule:

Land at Cannisland Park, Parkmill, Swansea, SA3 2ED

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not be liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to the decision about lawfulness.

This is the plan referred to in my decision dated:

Land at: Cannisland Park, Parkmill, Swansea, SA3 2ED

Reference: APP/B6855/X/18/3213425

Scale:



**Appendix 11: Park Hill Caravan Park – Appeal Decision
(APP/P1133/X/23/3320991)**



Appeal Decision

Inquiry (Virtual) held on 13 September 2023

Site visit made on 14 September 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/P1133/X/23/3320991

Park Hill Caravan Park, Moor Road, Ipplepen, Newton Abbot TQ12 5TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ross Park Homes Ltd against the decision of Teignbridge District Council.
 - The application ref 23/00126/CLDP, dated 23 January 2023, was refused by notice dated 16 March 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: "Alteration to part of caravan site to alter the existing use of caravan site with 110 touring and 40 static caravans, amenity areas and ancillary facilities to a caravan site with 110 touring and 55 static caravans, amenity areas and ancillary facilities' would be lawful."
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is found to be lawful.

Applications for costs

2. An application for costs was made by Ross Park Homes Ltd against Teignbridge District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I issued a pre-inquiry note on 9 August, approximately a week before the main parties were due to complete and exchange proofs of evidence. I had prepared this note following consideration of the written submissions made to that point and reached some preliminary views on the matters that the inquiry would need to cover, without prejudice to my consideration of the evidence and visiting the appeal site.
4. The virtual public inquiry was held on 13 September with the site visit the following day. However, because of time constraints of both parties' advocates, I could not hear closing submissions on the day. I therefore kept the inquiry open to allow for closing submissions and costs applications in writing. The inquiry was closed in writing on 5 October following a period to allow for comment on those written submissions.

5. The description of the proposal as set out above is taken from the section of the application form which asks why applicants consider that a LDC should be granted. It is repeated on the appellant's documentation including their supporting statement and the application description used by the Council on the decision. My understanding of the case is that the appellant's description of the existing use is that based upon what has been subject to previous LDCs which I will go onto explain in detail below. Briefly however, whilst the description used above refers to 40 "static" caravans there is no dispute that the relevant LDC description was for "up to 40 caravans".

Main Issue

6. It was agreed by the main parties that the main issue is whether the Council's decision to refuse the LDC was well founded with particular regard to whether the proposal would involve the making of a material change of use of the appeal site.
7. A draft Statement of Common Ground (dSOCG) was submitted shortly before I opened the inquiry and whilst this was not entirely agreed, I did seek confirmation of what appeared to be some agreed matters. It was agreed that in considering the main issue the following are relevant to take into account:
 - the status of the recreational amenity areas (which were the subject of another LDC in 2019 ref 19/01975 which I will refer to as 'the 2019 LDC') and whether those are the only activities that can take place in those areas;
 - whether the proposed alteration to the caravan site would result in a change of use; and
 - whether, if there is a change of use of the caravan site, whether that change would be a material change of use.
8. Another important matter to consider in the context of the main issue, is that I have to consider lawfulness of what is proposed on the date of the application and on the balance of probabilities. For the avoidance of any doubt, it is worth emphasising that the planning merits of what is proposed is not directly relevant to my considerations of this appeal.

Reasons

9. The appeal site incorporates a tract of land on the northern part of that owned by the appellant company, which stretches from Moor Road to the west and the A381 to the east, on the outskirts of Ipplepen. Within the Council's submissions leading to the appeal and at the inquiry, a plan has been used to explain the different parts of the land within the appellant company's ownership. This was particularly useful in building up a picture of the site and referencing various parts of the site. A further iteration of that plan was included in the dSOCG to refer to another field also in the same ownership. Given that this plan is a helpful reference, I have appended it to this decision to assist my reasoning and will refer to fields 1 – 5 as shown on that plan.

Background

10. The appeal site is subject to a number of planning applications and appeals, including some other LDCs and it is useful to set out some of the most

pertinent history. Much of the history is not disputed between the main parties. It is also relevant to consider an area of land broader than the current appeal site in order to assess significance of various decisions as well as the planning unit for the present case.

1990s

11. Planning permission was given in 1991 for an area of land to the south of the current appeal site (*ref 91/01031/COU, part of Field 4*) for "use of land as site for touring caravans". The planning conditions attached to that planning permission included a restriction that the site shall be used solely for "touring caravans and camping" (condition 2) and another restricting use to only between "Easter and 30th September in each calendar year" (condition 3).
12. A submission in 1993 (*ref 93/01485/FUL*) relating again to land within Field 4, sought the "removal of condition 3" of 91/1031 and was approved with a condition stating that "no touring caravan shall remain on site for more than three months in any one calendar year".
13. Permission (*ref 93/02752/FUL*) again relating to part of Field 4, was then given for the variation of condition 2 of 93/1485 and a new condition No 2, was imposed stating that "other than during the period from 1 April to 30 September, no caravan shall remain on the licensed site for a period in excess of one month."
14. Permission was then approved (*ref 96/02562/COU*) for "Change of use of land to form part of caravan park and removal of Condition 7 of 91/1031/15/4 relating to the restricting of numbers." The application site covered a sub-area of field 4. This was approved with a number of conditions including No 2 stating "the site shall be used for touring caravans and camping and for no other use without prior permission" and No 3 "other than during the period from 1 April to 30 September, no caravan shall remain on the licensed site for a period in excess of one month."

2000s

15. In 2018, an application for planning permission (*ref 18/00889/FUL*) sought the use of land for the "siting of 8 holiday lodges (caravans) with associated works and decking, access, parking and sewage treatment plant". This relates to an area to west of Field 4. It was approved with conditions including (No 3) stating that the lodges shall be for "holiday purposes only and for no more than 4 consecutive weeks". Little emphasis was given to this permission which was approved on 19 November 2018 with a standard time limiting condition stating that it should be begun within 3 years. The appellants refer to "holiday statics (not yet installed)" and consider that this permission extant but I heard no evidence about that.
16. In 2019, an application for an LDC was submitted (*ref 19/01975/CLDE – 'the 2019 LDC'*) which relates to the land incorporating Fields 1, 2 and 3. The LDC was granted which confirmed "the use of the site as recreational and amenity areas ancillary to Ross Park Caravan Park".
17. Another LDC was then granted in 2020 (*ref 20/00445/CLDP – 'the 2020 LDC'*) relating to the middle of the northern fields, Field 2. The LDC was given for the "proposed use of land for stationing of up to 40 caravans". Within the reason for granting the LDC, the decision notice states: "*Planning permission exists for*

the use of the land edged in blue on the plan attached to this Certificate as a holiday caravan site;...” (Field 4) “.. a Certificate of Lawfulness was granted which included the area edged in red on the plan,....” (Field 2) “... as a leisure field ancillary to the Caravan Park, in effect incorporates this area of land into the Caravan Park, thereby forming one planning unit. The number of caravans proposed to be sited in this area is not considered to intensify the use or change the character of the site such that a material change of use will have occurred.”

18. A LDC was also issued following an appeal in 2022, which related to the part of Field 4 which is used for touring caravan pitches (ref APP/P1133/X/21/3288187 ‘the 2022 LDC’). The description of what was sought is “the existing use of the land for the siting of caravans without complying with condition 2 of planning permission 93/2752/15/3 and condition 3 of planning permission 96/2562/15/4.” The Inspector’s reason for issuing the LDC was due to the conditions having been breached for 10 years or more and that they were therefore immune from enforcement action.
19. There have been other applications to the Council. There is also an appeal which is awaiting determination for “for siting of touring caravans sited throughout the year and used as main place of residence.” That appeal relates to the touring caravan area which is a part of Field 4.

Existing primary lawful use of the appeal site

20. The above planning history along with other evidence including that given to the inquiry enables some conclusions to be drawn about the lawful primary use of the appeal site. That is my starting point for considering what is proposed.
21. There is no dispute that field 4 is where, in 1991, the caravan site was started following the approval as a touring caravan site. That caravan site appears to have evolved including by the incorporation of other adjoining land although it was at that time only a site for touring caravans and for camping.
22. The 2019 LDC is significant in that it confirms that by the date of that application, fields 1, 2 and 3 were collectively used as “recreational and amenity areas” stating that this was “ancillary” to the caravan park.
23. The 2020 LDC confirms that the stationing of an additional 40 caravans would not be a material change of use as field 2 is part of the holiday caravan site. This did not specifically refer to any particular type of caravan (hence my reference in the preliminary matters to the description of the current proposal).
24. There is no dispute that static units as proposed in the present case fall within the statutory definition of caravans¹. “Caravan” within the definition of the 1960 Act means 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. The 1968 Act provides further definition of the maximum size for twin-units which gives the only size limitation for caravans.
25. These LDCs are significant for what they confirm was considered lawful at those points in time based upon the evidence submitted at that time. Section 191(6) (for existing use or development) and s192(4) (for proposed use or

¹ s29 Caravan Sites and Control of Development Act 1960 and s13 Caravan Sites Act 1968

development) of the Act state that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall "conclusively be presumed". This is consistent with the Breckland² legal authority, and others, that have been referred to me.

26. I will return to the concept of 'planning unit' again below, but from these documents I consider that it can be conclusively presumed that the whole of the Ross Park site including fields 1, 2, 3 and 4 were, as at the time of the 2020 LDC a single planning unit in use as a holiday caravan site, that being the primary use and with ancillary activities taking place across that unit.

Terms of this appeal

27. Some static units have already been positioned within field 2 and are occupied as permanent park-homes and not on a holiday occupancy basis. Whether or not that has involved a material change of use already or any other breach of planning control has occurred, is not before me.
28. As I set out above in the preliminary matters, the description of the existing use of the site as set out on the application form and decision notice refers to 40 "static" caravans. However, it would be fairer to refer to the existing use of the site, as being for 110 touring and 40 caravans. I drew attention to this when Mr Rudd was cross-examining Mr Crawford.
29. The layout of the static caravans within field 2 that I saw is however similar to that shown only in 2 dimensions on the 'Proposed Phase II Sketch Layout' (referred to in submissions as the 'block plan') submitted with the refused application. It appears that a substantial amount of ground works have taken place to enable this in terms of levelling, laying of hardsurfaces for the static units as well as vehicle parking and also the laying of the internal road which are not apparent just from that plan.
30. It is proposed in this case for 40 static units to be positioned within field 2. In addition, 9 static units are shown on the block plan to be positioned within field 3 and 6 within field 1. There is no request for confirmation of the lawfulness of any specific type of occupation of those caravans. I am therefore considering whether they would be lawful if occupied within the scope of the use of the land as a holiday caravan site.

Planning unit

31. Given the terms of the 2020 LDC, it can be presumed that the lawful primary use of the land is as a holiday caravan site. Although that LDC included field 2 and field 4, given the context of the previous 2019 LDC, it clearly relies upon use of fields 1, 2, 3 and 4. All of the fields are within the same freehold ownership.
32. At the entrance to the 'static' units in field 2 there have been signs erected stating "Private Area – Access for residents of Haytor View only". Haytor View is the name of what has started to become the permanent residents' area. However, the occupants of that site still have to gain access via the main site entrance and drive through field 4 where touring caravans, camping and caravan storage takes place. The residents of the static units also still have

² Breckland DC v SSHLG & Plum Tree Country Park [2020] EWHC 292 (Admin)

access to the amenity and entertainment areas which are an integral part of the site as a holiday park.

33. Previously, as an amenity area, field 2 would have been accessible by people staying anywhere on the site. They would also have been able to access other amenity areas for instance in field 1 by walking through field 2. There is no physical barrier to them doing so now but the signage and the clearly more private appearance of the area now laid out for the small number of statics in field 2 that have already been positioned, provides a more unfriendly context for people other than those staying or specifically visiting people living in the static units. This in my view makes it less likely to be an area that holiday makers would walk or drive through. There remain other ways in which all of the site can be accessed by any of the occupants staying anywhere within it.
34. Another entrance has been created to the western part of the site onto Moor Road which Mr Eiser stated had been used for construction traffic in laying out the static units within field 2. That entrance has large timber gates that were closed when I visited and it accesses field 5 which is not part of the application site. Confusingly field 5 is shown as owned by the applicants in the 2019 LDC but not the 2020 LDC. Whether or not there is an intention to use that entrance in the future for any residents on the site, I have no evidence that it has been or was used for occupants of the existing static units in field by the date of the application. The rough, hard-core covering of field 5, does not suggest to me that it has been used to any significant extent by occupants or visitors to the existing static units or that it is conducive to such use or use by occupants of the wider site. Similarly, part of field 1 has a rough, informal surface rather than the more manicured, well-maintained appearance of the areas where there is more activity. The few static units in field 2 are currently let to their occupants with the appellant company owning the freehold.
35. Fields 1, 2, 3 and 4 are in single ownership and freehold occupation and are not physically or functionally separated from one another. They therefore comprise, as a matter of fact and degree, a single planning unit.

Whether a material change in the use is proposed

36. Mr Rudd spent some time in cross-examining Mr Crawford about the terms of the 2020 LDC and the lack of reference to holiday use within what had been applied for at that time. It seemed to me that Mr Rudd was suggesting that if there had been any ambiguity with the 2020 LDC, that could be appropriate to look behind at the application documents. I do not consider, however, that there is any ambiguity with the 2020 LDC as its terms are clearly set out and I have quoted them above.
37. The 55 static caravans now proposed would be positioned on land which was formally certified by the 2019 LDC as recreation and amenity land. The stationing of caravans on land is not in itself development within the meaning of s55 of the Act and it is the purpose of the caravans which relates to what use the land is being put to that is relevant to consider. The purpose of the caravans is for people to occupy them with no type of occupation specified.
38. I have been referred to the Cotswold Grange³ authority in support of the appellant's case. That case related to a grant of planning permission where the

³ Cotswold Grange Country Park LLP v SSCLG & Tewkesbury DC [2014] EWHC 1138 (Admin); [2014] JPL 981

description of the number of caravans was insufficient to control those numbers in the absence of a condition to that effect. I accept that point and that an application for a LDC can be viewed in a similar manner as a planning permission. In this case, there are no limitations over the number of caravans that can be positioned on the site overall. I also accept that the description in the previous planning history including the LDCs identifies what can be done, what is permitted rather than the alternative of a planning condition which can identify what cannot be done.

39. The appellant also refers to the Breckland judgement in stating that changing the type of caravan amongst other things would not amount to development on a caravan site. In the present case, there is no proposed change in type of caravan from touring to static or a change in the type of occupation proposed, The change in this case would be from ancillary activities in the form recreational and general amenity areas to the positioning of static caravans.
40. In this case, the 2020 LDC describes the use as holiday caravan site but does not qualify that as being only, for example, for touring caravans or for seasonal occupancy but does include a limitation of up to 40 units. The caravan site was established in 1991. The planning permission relating to part of field 4 explicitly, by way of planning conditions, limited the use for touring caravans and camping. The 2019 LDC described the certified use of fields 1, 2 and 3 as recreational and amenity areas. These are therefore functional limitations which define the way in which the use has been operated and the way it is lawful to operate it.
41. In the absence of any functional limitation regarding the type of caravans that have already been certified as being lawful within field 2 via the 2020 LDC, I accept that there is no absolute control over this. With reference to the Hertfordshire⁴ judgment, the change proposed would only result in a material change of the use of the land if it brought about a definable change in the character of the use.
42. The 2020 LDC certified 40 caravans and not 40 static caravans. Both parties had started to assume otherwise. Given this, it is clearer to me that I have to consider whether 55 static caravans would be lawful rather than just the 15 additional caravans.
43. I have set out above my logic for considering that the single planning unit can lawfully be used as a caravan site along with ancillary activities which are undertaken in open areas across the site as well as within buildings. That caravan site has been established on the basis of holiday use. I saw that the large part of the central part of the site within field 4 has an open, communal and informal feel. The touring pitches are separated by informal yet substantial, mature planting including some large trees. The surfacing of the pitches in the most part are informally covered in gravel although the circulatory road is hard-surfaced. There is a variety to the type of caravans and also motor-homes that I saw positioned within field 4.
44. The main open-space recreational area within field 3 is also characterised by an informality with the landscaping not being regimented. It is clearly subject to ongoing maintenance with the grass being kept cut and tidy. Other areas such as within the western part of the appeal site, also have areas of substantial

⁴ Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd [2012] EWCA Civ 1473; [2013] JPL 560

- hedge planting. I was visiting towards the end of the summer, on a sunny day and the site at that time had a very verdant character.
45. The static units that have already been positioned within field 2 along with the layout of the pitches that are not yet occupied, at the moment contrast substantially with this verdant, informal character of other parts of the site. I have little evidence about what this area looked like before the current redevelopment took place although some aerial photographs have been provided. I am mindful that the landscaping that I saw between the new pitches is recently planted, that it will grow if left to do so and that the site may well 'green-up' as well. Those units that have been positioned on the site already are, it is not disputed by the appellant, occupied on a residential basis and that appears to have resulted in a number of items being placed around them such as large domestic wheely-bins and also more permanent features such as small sheds, stores and other domestic paraphernalia.
46. Caravans come in various shapes and sizes and the statutory definitions provide maximum limitations. In my experience, touring caravans can be very large but generally speaking are brought onto site by a vehicle or sometimes stored and brought out onto their respective pitches by site staff. Static units generally speaking have a greater degree of permanence than touring caravans. They arrive on site at one time on specialist vehicles and stay in position. Touring units are generally ephemeral. The difference in type of caravan may also alter the make-up of the traffic to and from the site. It seems logical that static units may cause less vehicle related implications for roads within and outside of the site. People driving to stay in a static caravan are less likely to be towing anything behind them, for example.
47. The physical presence continuously of the 40 static units would have more of a constant visual impact, particularly at close quarters, even when they are not occupied. It was agreed however by the Council in the inquiry that there are no strict seasonal limitations. A holiday caravan is most likely to be occupied during the holiday seasons. This can vary according to the personal circumstances of visitors, how the site is managed as well as weather conditions.
48. When the Council accepted that the stationing of up to 40 caravans in field 2 would not require planning permission, I must assume however that they took into account that 40 caravan pitches for any type of caravan would have had similar impacts upon the character of this field and through off site impacts. They confirm on the face of that LDC that it would not intensify the use or change the character of the site. Many of the changes to the characteristics of the holiday caravan site would be expected whether they have occurred due to 40 touring caravans being stationed and used on field 2 or whether they are 40 static caravans, or even a mix of types.
49. With respect to the remaining 15 static units proposed, the crucial test established from Sage⁵ is whether there would be a change in character of the use, in this case, to expand the number of static caravans from 40 to 55. The environmental impact can be relevant as evidence of a material change of use due to an intensification and this is a matter of fact and degree. Childs⁶ also related to a caravan site for 4 caravans that had been confirmed as lawful via a

⁵ Sage v SSHCLG & LB of Bromley [2021] EWHC 2885 (Admin)

⁶ R (Oao Childs) v FSS & Test Valley BC [2005] EWHC 2368 (Admin)

s192 LDC. A Planning Inspector's conclusion that 8 caravans would be a material change in the character of the use, taking into account the impact on the immediate surroundings was, the court decided, a decision they were entitled to make.

50. I describe field 3 above. It is a large area with some open grassland and which has a wooded feel. This is therefore a pleasant informal area which is used for dog walking and for general open recreation. It adjoins a shelter that includes a dog shower and also a place for emptying chemical toilets. Around the western and southern parts of this field, 9 static units are proposed, being shown on the submitted block plan in a more spacious, informal manner than those within field 2.
51. Field 1 is largely split into 2 separate parcels by a substantial row of trees. These separate out what is shown as a "conservation and amenity field" on the submitted block plan and which had a patchy covering of rough grass when I visited. On the eastern side of the line of trees is a narrower strip of land which at the time of my visit had a rough surface with various equipment and items informally stored on it including a shipping container and a portable unit. The block plan shows a row of 6 static units within this eastern part of field 1.
52. These additional caravans would result in some more traffic movements, more people on the site using the facilities. The 9 static units in field 3 would be informally laid out if the block plan is adhered to with room for grass and landscaping in-between. There would be space for residents at the site to continue to walk their dogs, possibly play ball games and other recreational activities requiring an open space. Those units proposed in field 1 are shown to be more formally laid out. All of the additional 15 static units would also have a visual effect upon those fields but this would be very limited and localised in impact in my view. However, in both instances, the use of the fields for recreation and general amenity by all occupants on the site would still be possible. Although use of field 2 for anything other than the positioning of those 40 static caravans would be very limited, that would be the case whether the caravans installed are static units or touring caravans.
53. As a matter of fact and degree, I therefore consider that the proposed 55 static caravans would not cause a material change in the definable character of the land if occupied for holiday purposes on the holiday caravan site. As such, use of the site overall for 110 touring and 55 static caravans would not involve a material change of use of the appeal site and would be lawful.

Conclusion

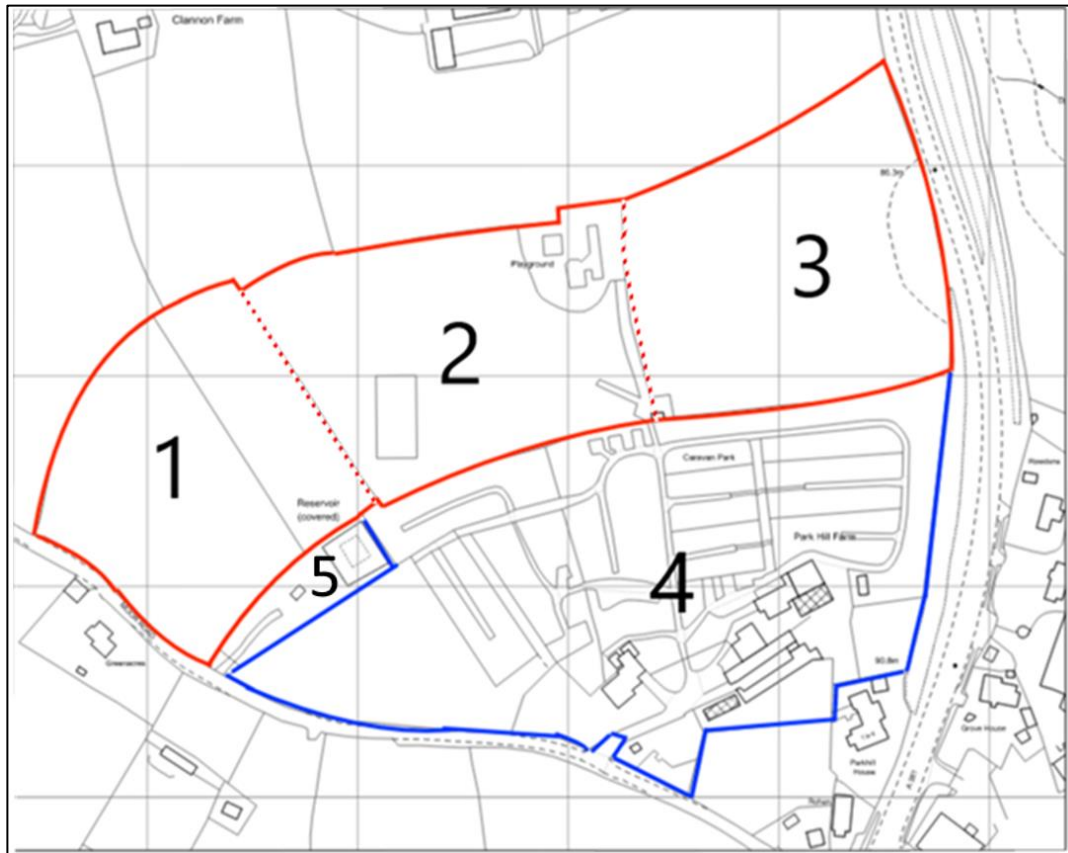
54. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect to alteration to part of caravan site to alter the existing use of caravan site with 110 touring and 40 static caravans, amenity areas and ancillary facilities to a caravan site with 110 touring and 55 static caravans, amenity areas and ancillary facilities' would be lawful, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

INSPECTOR

Appendix: Land ownership Plan

Extracted from the draft Statement of Common Ground



APPEARANCES

FOR THE APPELLANT:

Mr Rudd of Counsel

They called:

Mr Eiser Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ward of Counsel

They called:

Mr Crawford Planning officer

INTERESTED PARTIES:

None who gave evidence

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 January 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed 55 static caravans within the appeal site as shown on 'plan 2' attached herewith, when occupied for holiday purposes consistent with the use of the land as a holiday caravan site (as outlined both in red and blue on 'plan 1') along with up to 110 touring caravans, amenity areas and ancillary facilities, would not involve a material change in the definable character of the land. As such, the proposal as specified would not therefore involve a material change of use of the holiday caravan site overall.

For the avoidance of doubt, 'plan 2' shows some land that is outside of the planning unit considered for the purposes of this certificate. The holiday caravan site as a whole is shown outlined both in red and blue on 'plan 1' as attached.

Signed

Andy Harwood

Inspector

Date: 6 October 2023

Reference: APP/P1133/X/23/3320991

First Schedule

Alteration to part of caravan site to alter the existing use of caravan site with 110 touring and 40 static caravans, amenity areas and ancillary facilities to a caravan site with 110 touring and 55 static caravans, amenity areas and ancillary facilities.

Second Schedule

Land at Park Hill Caravan Park, Moor Road, Ipplepen, Newton Abbot TQ12 5TT

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan 1

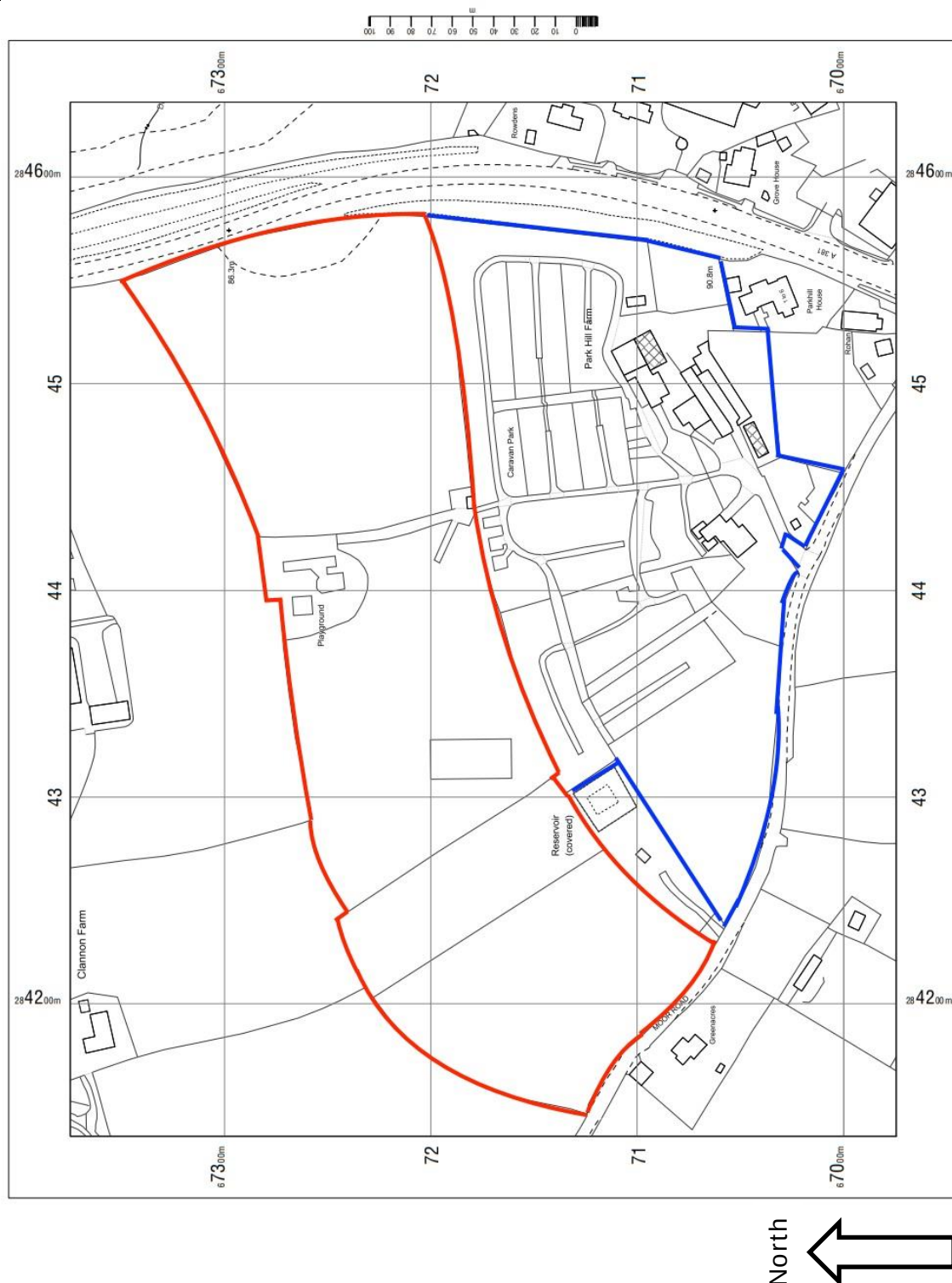
This is the plan referred to in the Lawful Development Certificate dated: 6 October 2023

by Andy Harwood CMS MSc MRTPI

Land at: Land at Park Hill Caravan Park, Moor Road, Ipplepen,
Newton Abbot TQ12 5TT

Reference: APP/P1133/X/23/3320991

Scale: Not to Scale



Plan 2

This is the plan referred to in the Lawful Development Certificate dated: 6 October 2023

by Andy Harwood CMS MSc MRTPI

Land at: Land at Park Hill Caravan Park, Moor Road, Ipplepen,
Newton Abbot TQ12 5TT

Reference: APP/P1133/X/23/3320991

Scale: Not to Scale





Costs Decision

Inquiry (Virtual) held on 13 September 2023

Site visit made on 14 September 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Costs application in relation to Appeal Ref: APP/P1133/X/23/3320991
Park Hill Caravan Park, Moor Road, Ipplepen, Newton Abbott TQ12 5TT

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ross Park Homes Ltd for a full award of costs against Teignbridge District Council.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for "alteration to part of caravan site to alter the existing use of caravan site with 110 touring and 40 static caravans, amenity areas and ancillary facilities to a caravan site with 110 touring and 55 static caravans, amenity areas and ancillary facilities' would be lawful."
-

Decision

1. The applications for awards of costs are refused.

Preliminary Matters

2. Prior to the inquiry and the deadline for the submission of proofs of evidence, I sent a note to the parties setting out some of my preliminary views on the case. Within that, I also strongly suggested that the case did not warrant a public inquiry but the applicant for costs did not agree. Whilst the Council considered that a hearing would be necessary, I am still of the view that the case could have been satisfactorily dealt with via the written representations procedure saving everyone involved costs and time.
3. The inquiry was closed in writing on 5 October after I had received this cost application in writing. I do not need therefore to repeat the cases here.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The reason for refusing the application had simplistically referred to the only lawful use of the application site being as recreation and amenity land. That was based upon an assessment that a new planning unit had been created. Whilst I did not agree with that position, the Council in their defence of the appeal referred to the matters that I needed to take into account. This included an explanation of the factors to consider when determining whether an intensification of a use would result in a material change of use. Those matters are largely matters of fact and degree which will be for the decision

maker to consider in the round.

6. The Council's planning witness at the inquiry assisted my understanding of these matters. The consideration of the secondary access into the site was also relevant and the Council were not wrong to pursue that line of cross examination. The Council's witness had shown some confusion about the requirements for showing site areas and other land with respect to Lawful Development Certificate (LDC) applications. The advice for planning applications within the PPG was incorrectly referred to. However, their interpretation was not decisive in how the Council had considered the LDC application overall. There has also been inconsistency in what land has been shown on the plans for previous LDCs at the site with the 2019 application showing land where the secondary access is located within the applicant's ownership whereas other applications, including that which is the subject of the appeal, not showing it.
7. The applicant also suggests that the Council has mis-applied case law relating to interpretation of how the use of caravans may or may not be restricted. During the particular line of cross-examination by the applicant's advocate on this point, the Council's witness was asked to look at the documents that were submitted with and LDC applications in 2020. However, for reasons that I have set out in my decision, much of this seemed unnecessary as the relevant LDC is not ambiguous with respect to the use of the appeal site overall. The Council, did veer at times into matters concerning the type of residential occupation of the existing static caravans on site which was not entirely material to what I had to consider, given the terms of the application and the background history. However, this was not completely clear-cut given that the use of part of the site may well be how the applicant intends to use the remainder of the site even though that is not explicitly what they applied for.
8. Overall, the crucial parts of the appeal decision relied upon judgements based upon assessing matters of fact and degree. The documentation that had been submitted in support of the respective cases had set out both parties' points of view in a manner that helped me understand them, even if I did not agree with them. Importantly in this case, I could set the representations in proper context once I had visited the appeal site.
9. The PPG makes it clear that for a successful award of costs, it is necessary to show that a party has both acted unreasonably and that the unreasonable behaviour has directly caused another party to incur wasted expense. In this case, the Council had drawn attention to matters that were relevant for me to consider in making my determination and which had clarified some relevant matters. I didn't agree with their interpretation, but they were largely matters of judgement that were not unreasonable or clear-cut.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andy Harwood

INSPECTOR

**Appendix 12: Little Venice Country Park and Marina – Appeal
Decision (APP/U2235/X/22/3300066)**



Appeal Decision

Hearing Held on 16 November 2023

Site visit made on 16 November 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Appeal Ref: APP/U2235/X/22/3300066

Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent
ME18 6HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Albert Lee of Little Venice Caravan Park and Marina against the decision of Maidstone Borough Council.
 - The application, Ref 22/500517/LAWPRO, dated 2 February 2022, was refused by notice dated 25 April 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed stationing of 10 caravans for holiday use.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Application for Costs

2. The appellant has made an application for costs against the Council. This will be the subject of a separate decision.

Procedural Matters

3. Both parties refer to the planning history of the site. I therefore asked to be provided with a copy of various¹ decision letters and approved site location plans before the opening of the Hearing. This was to better understand the planning history of the site.
4. The Council highlight a new point made by the appellant in their Statement of Case, namely that "no works requiring planning permission are required to allow the siting" of the caravans. I have taken it into account in my determination of the appeal because if only evidence from the time of the application was to be considered as part of the appeal, it denies the purpose of the LDC procedure. This is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In any event, it would always be open to the applicant to re-apply and it would serve no useful purpose to refuse an LDC on the basis only of the evidence submitted with the

¹ References: 57/0003/MK3, 62/0353/MK3, 66/0019/MK3, MA/91/1049, MA/92/0156 and MA/12/0509

application, if subsequent evidence had come to light proving the case on the balance of probability.

5. The appellant confirmed that the name of his company is Little Venice Country Park (LVCP) not Little Venice Caravan Park and Marina as stated on the application form. The address of the site though is Little Venice Country Park and Marina.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

Reasons

7. The appeal relates to what has become a long established static caravan park with a marina and riverside moorings situated on land between a canal and the River Medway. Access is from the east side of Hampstead Lane. Within the site, caravans are laid out either side of an access road which leads to a small marina and development is generally confined to the northern part of the land in the appellant's ownership. To the south of this area the land is open and comprises a field, known as the "southern" field. This is subdivided with alpacas kept in one portion. A new access is in the process of being laid out into the field from Hampstead Lane. The red line of the LDC application site delineates a rectangular area, which is part of the southern field immediately adjacent to the caravans, away from the road and the alpacas.

The planning unit and the planning history of the site

8. The appellant disputes that the development would amount to a material change of use and as such it is necessary to ascertain the correct planning unit and the present and previous primary uses of that unit. The leading case on the subject is *Burdle*² and the tests within it start with the unit of occupation and turn on the concept of physical and functional separation.
9. The area to be looked at is the whole of that used for a particular purpose. The Courts have held that the area covered by a planning permission is not necessarily determinative of the planning unit but it is likely to be relevant and is a good starting point. As such, I shall begin there.

The 1957 permission

10. Planning permission was granted on appeal in 1957 for a proposed caravan site subject to various conditions, including that the total number of caravans stationed on the site should not exceed 10 and occupation should be limited to the period between 1 March and 31 October each year. Furthermore, the use should be discontinued after five years.
11. The site shown on the plan refused by the Council is a rectangular parcel of land, approximately 1.9 acres in area, with the short side immediately adjacent to Hampstead Lane. The Minister's decision letter though refers to a change in this plan (paragraph 3) and that it was the appellant's intention to site 10 caravans over the 14 acres of orchard land owned by him.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

12. Unfortunately, the Council do not appear to have kept a copy of the plan considered by the Inspector. However, the Inspector describes the site as bounded by hop fields to the south, the River Medway to the east, Hampstead Lane to the west and a playing field to the north. The Council's 1960 aerial photograph appears to show most of the southern field as being used for hop growing, which supports part of this description.
13. However, the Inspector's report on the next appeal in 1962 concluded that the 1957 planning permission for 10 caravans to be sited on 14 acres appeared to include land forming the short side of what I shall describe as an L shape. The question he was therefore asked to resolve was not so much the suitability of the short side of the L shape for 28 caravans but, whether or not, more than 10 caravans could possibly be accommodated over the whole L shape (the 14 acres).
14. Therefore, having regard to the 1962 Inspector's report, it appears the 1957 Inspector was considering an L shaped parcel of land extending between Hampstead Lane and the River Medway but excluding the yet to be built small marina area, when the appeal was allowed.

The 1962 permission

15. In 1962 planning permission was granted on appeal to site 28 caravans for holiday use. The site plan showed them laid out on land forming the short section of the L shape. Conditions imposed limited the number of caravans to 28 for use between 1 March and 31 October.
16. What appears to be the approved layout plan accompanying the appeal shows the portion of land nearest Hampstead Lane as still containing an old orchard, which screened the parcel of land behind it (the middle of the site) which is shown as being used for the stationing of 10 caravans.

The 1966 permission

17. In 1966 planning permission was granted for what is described as "an extension of existing caravan site (approximately 13 acres)". It is not clear whether "extension" meant either additional land to site further caravans or an extension of the existing time-limited use given in 1957. It could also mean simply an application to site more caravans within the L shape. The first explanation is doubtful as the same L shape and size is shown on the plans as previously and the second option is possible as the 1957 permission would have expired. However, mindful how other proposals have been described in the history of the site, it is more likely than not that the proposal is to site more caravans within the L shape. Regardless of these scenarios, the L shape minus the yet to be built small marina has no clear red line or solid black line outlining the site.
18. Nevertheless, the following points support my conclusion. The conditions limit the time of year when the caravans could be used but condition (v) requires a tree planting scheme for the boundaries of the site to be submitted and approved "*before the additional use of the site is commenced*" (my emphasis).
19. In addition, the plans accompanying the decision show caravans laid out in the old orchard area at the front of the site and proposed additional tree planting bordering the location of the 10 caravan's area (the middle of the site) and the 28 caravan's area (short side of the L shape). As such, it appears the planning

permission was for an extension of the use within the L shape, namely the siting of caravans within the old orchard. There was no limit on the number of caravans that could be sited on the land and the use was not temporary.

The 1991 permission

20. In 1991 planning permission was granted to vary condition 1 attached to the 1966 planning permission to permit the occupation of caravans between 1 November and the last day of February the following year. This was subject to two conditions, namely that there should be no permanent occupation of any caravan and that between 1 November and 28/29 February, occupation should not exceed 28 days. These conditions were replicated in a section 106 agreement (S106A) accompanying the application. The approved plan showed the L shape site but excluded the now built marina area.

The 1992 permission

21. In 1992 planning permission was granted on appeal for a slightly different wording of condition 2 attached to the 1991 planning permission, to reflect the wording in the S106A. The new condition still stated no caravan shall be occupied other than for holiday accommodation or for more than 28 consecutive days between 1 November and 28/29 February the following year. The approved plan delineates the L shape but excludes the small marina. The inspector visited the site and stated, "the caravan park contains 120 static caravans".

The 2012 permission

22. In 2012 planning permission was granted for a porch extension to the reception building at the front of the caravan site. The location plan accompanying the application showed a red line around the caravan site, the small marina and the southern field.

Other decisions

23. Other applications were also listed by the Council in their planning history of the site such as the 1972 approval for the construction of the small marina. However, I have also had regard to the site licences³ provided by the parties as these state the planning reference numbers (the permissions) on which the licence for 120 caravans is based.
24. Four permissions are listed but only one is found in the Council's planning history set out in their Statement of Case, namely the 1974 permission for the stationing of 1 caravan for staff accommodation. As the site licences are issued for 120 caravans, it is therefore unclear how this figure became the established figure. The licences also vary in the area of land shown to be covered by the licence with some including the small marina, some not and some extending the small leg of the L shape.

Analysis

25. Overall, the planning history and site licences provide a limited and sometimes confusing narrative to explain the existing development. What is clear to me though is that the unit of occupation is the land used as a caravan park, marina and riverside moorings. It appears it has always been in one ownership since it

³ These are dated 2006, 2012, 2018

was developed with the appellant owning the site since about 2016. Although the appellant states there is a functional separation between the caravan use and the boating use, I find they are linked in that they are both leisure uses that appear to make use of the same facilities. Whilst the appellant accepts there is a physical connection in that caravanners and boaters both make use of the same access road into the site, it seems to me the uses cannot be so easily uncoupled.

26. In order for both uses to function, there needs to be waste disposal and it appeared walking around the site that waste collection points are spread evenly around the whole site, there being no obvious signage that separated caravan waste from boating waste. Car parking is also not separated. Although there is a parking area next to the slipway, which may be reserved for boaters, it is also next to a group of caravans overlooking the marina. Since most caravan pitches are not wide enough to include an off-road parking space, cars are generally parked in white painted bays singularly or in groups all around the site.
27. The site also provides a launderette and shower block which could be for boaters but the launderette could also be for the use of caravanners as generally not all caravans have washing machines. In addition, there is a clubhouse on site, which appeared to be open to all. Finally, I have noted from one of the letters supporting an LDC application for the recreational use of the southern field that there is an annual gathering of boat owners on the field.

Conclusion

28. For these reasons I find the site comprises one planning unit which is in a mixed use. The boating use is not incidental to the caravan use, it is a significant use on its own but the way it functions makes use of some of the same areas and facilities as the caravan use. To a certain extent the areas of occupation are separate in that the boaters largely occupy the water but it is for the same purpose as caravanners, namely leisure.

Whether the planning unit includes the southern field

29. An LDC was granted in 2019⁴ establishing the existing use of the southern field as ancillary recreational land used in connection with LVCP. The effect of this LDC is that it confirms caravanners and boaters have used the southern field for various types of informal recreation for over 10 years whilst they have occupied LVCP.
30. The use is not a primary use as it cannot be severed from the caravan and marina use. The site is only used by the caravanners and boaters when they are in residence so there is a strong functional link with LVCP. It must therefore be an ancillary use.
31. I agree with the Council that the LDC does not define the planning unit but it is part of the planning history of the site. Determining an LDC appeal is an interpretive process and as such it is open to me to consider whether any inference can be drawn from the LDC.
32. In this case there is no public access to the southern field. For example, it is not bounded or crossed by any public right of way. Access to it is from within

⁴ Reference: 19/500238/LDCEX

LVCP, where there is a gap between some caravans. It can therefore only be used by holiday makers. Their evidence described informal recreational use and the use of the southern field that has been found to be lawful is stated on the decision notice as “ancillary recreational land used in connection with Little Venice Country Park”. It seems to me, as a matter of fact and degree, that must mean the southern field is part of the planning unit.

33. The Council refer to the case of *Axbridge*⁵ but my reading of the circumstances in that case leads me to conclude that it is not comparable with the appeal before me. For example, the conclusion on the land used in conjunction with the caravan site was made after considering the nature of the land surrounding the single caravan in that case. It was found to be wasteland comprising sand dunes which were crossed to access the beach. The southern field, in contrast, is a regularly maintained piece of land that is used for a variety of activities throughout the year.
34. For these reasons I find the southern field is part of the caravan site and marina. My next consideration is therefore whether 10 caravans sited on the southern field would amount to a material change of use.

Whether there would be a material change of use

35. It is not disputed that intensification of a use is capable of constituting a material change of use. However, a change in use can only be material if there is a definable change in the character of the use made of the land. This is the first step in the consideration process.
36. The Council have made the assessment as being whether there would be a definable change in the character of the use of the southern field. This is on the basis that it is a new planning unit and the southern field was outlined in red on the 2019 LDC application plan. However, this overlooks the point that the use of the southern field is in connection with the caravans and boats and is therefore not a new separate planning unit. Furthermore, the red line delineates the area of land which is the subject of the LDC application.
37. The majority of the site is used to station 120 static caravans. Whether all or some are used for permanent residential purposes, as opposed to seasonal holiday purposes, does not fall to be considered. It goes without saying that caravan sites vary in their appearance and the matters taken into account by the Council do not necessarily indicate permanent residential use is taking place. Indeed, when asked, the Council confirmed it had no evidence to contradict the appellant’s statement on the matter.⁶ What is relevant to an assessment of the character of the site are the features and qualities that make the place different from others.
38. To that end it is the number and disposition of the caravans and to a lesser extent the incidentals that accompany the stationing of caravans that define the character of the use of the site. That character is also derived from the mooring of boats in the marina and alongside the River Medway. Against this finding, the proposed development would not change that character as the site would continue to be used to station caravans and to moor boats. As such, the proposal would not result in a material change of use.

⁵ R v Axbridge Rural District Council [1964] 1 WLR 442

⁶ Planning Practice Guidance reference ID:17c-006-20140306

39. Notwithstanding my finding on character, if I had found otherwise, then the next step to consider is whether there are any off site effects in order to determine the materiality of that change.
40. That allegedly there would be an increase in noise and traffic does not result in a material change of use. There needs to be a significant effect of that increase on an existing noise and traffic issue but the Council were not aware of any such issues. Similarly, I find no visual harm, as alleged, as the 10 caravans would be seen against the backdrop of the existing caravan site. References to operational development do not fall to be considered as the appellant's application is made under section 192(1)(a) of the 1990 Act and the description of development is unambiguously described as a use of land.

Other matters

41. The Council sought clarity that the application would not involve operational development by suggesting an addition to the description of development but I find this is not necessary when the basis of the application is clearly understood. It would be unduly restrictive to define the use further and it is open to the Council to consider the situation should the appellant go beyond the description of development when implementing the use. It is also open to the appellant to submit a planning application for operational development, should that be necessary, prior to implementing the use.
42. I have had regard to the Council's appeal decision.⁷ This concerned a specific structure and on the facts of that case it was found to be a building. The matter being considered by that Inspector was whether the structure met the statutory definition of a caravan. The case is neither comparable to nor assists with the matter being considered in the current appeal, which is whether the development would amount to a material change of use.

Conclusion

43. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed stationing of 10 caravans for holiday use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR

⁷ Reference: APP/W3005/X/22/3302578

APPEARANCES

FOR THE APPELLANT:

M Rudd	Of Counsel
G Bailey	Senior Director, RPS Group
A Lee	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

R Morton	Solicitor, Ivy Legal, instructed by Maidstone Borough Council
N Whittaker	Senior Planner, Ivy Legal

Document

1 Appeal decision,
APP/W3005/X/22/3302578



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 February 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not amount to a material change in the use of the land as there would be no definable change made in the character of the use of the land. It would not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990 as amended and no planning permission is required.

Signed

D Fleming

Inspector

Date 5 December 2023

Reference: APP/U2235/X/22/3300066

First Schedule

Proposed stationing of 10 caravans for holiday use.

Second Schedule

Land at Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent ME18 6HH.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

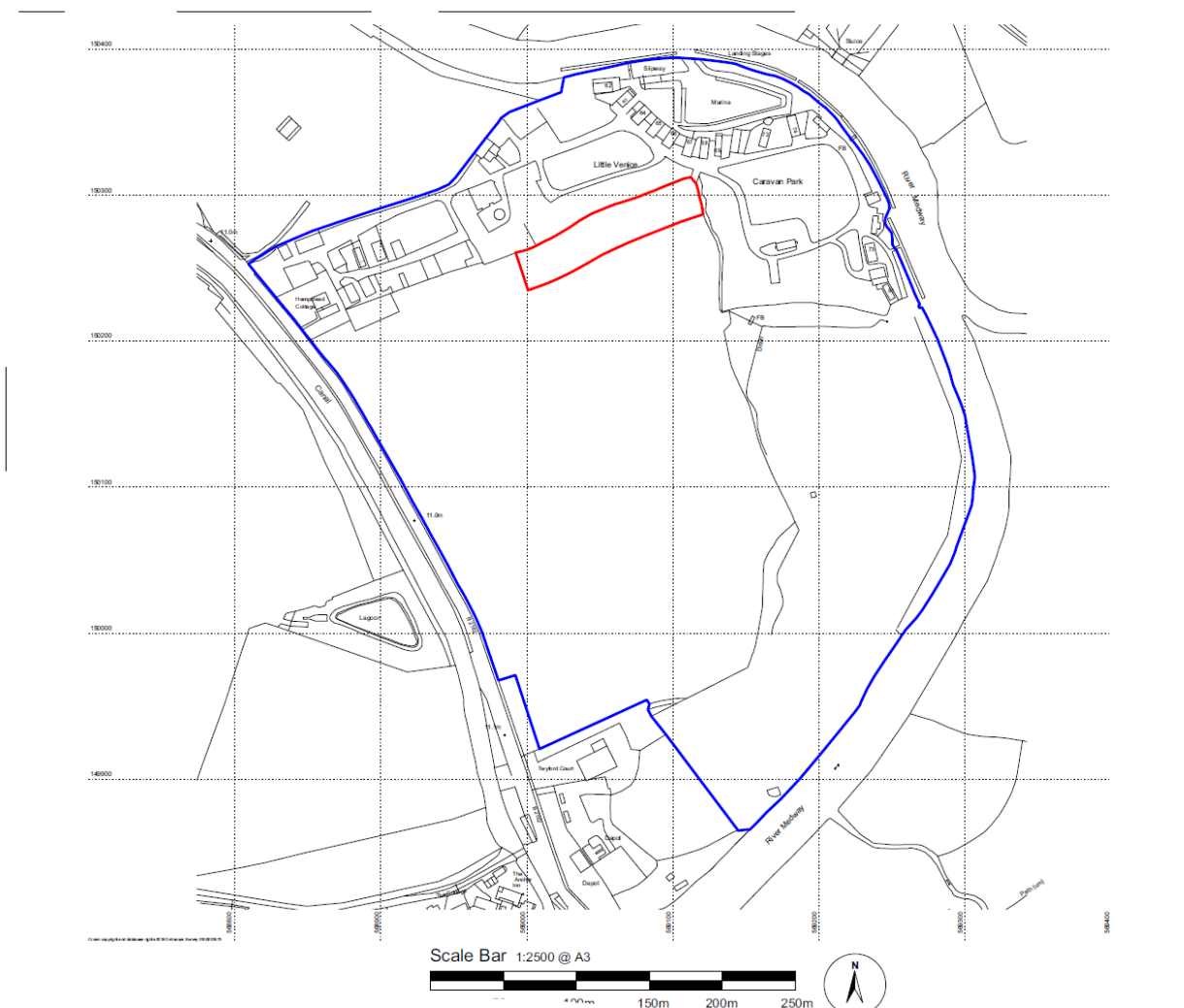
This is the plan referred to in the Lawful Development Certificate dated: 5 December 2023

by D Fleming BA (Hons) MRTPI

Land at: Little Venice Country Park and Marina

Reference: APP/U2235/X/22/3300066

Scale: not to scale





Costs Decision

Hearing Held on 16 November 2023

Site visit made on 16 November 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Costs application in relation to Appeal Ref: APP/U2235/X/22/3300066
Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent
ME18 6HH

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Albert Lee of Little Venice Country Park for a partial award of costs against Maidstone Borough Council.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for the proposed stationing of 10 caravans for holiday use.
-

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions for Mr Albert Lee of Little Venice Country Park

2. The application is made in respect of the Council's first and second reasons for refusal, which relate to operational development and insufficient information. The Planning Practice Guidance (the Guidance) sets out examples of reasons for awarding costs against a Local Planning Authority including acting contrary to case law and failing to produce evidence to substantiate their case.
3. With regard to the first reason for refusal, operational development does not form part of either the application or the appeal. The application was described in an unambiguous way, namely for the stationing of caravans, which are defined in law. The Council strayed away from the confines of the application to take into account a completely extraneous issue, namely operational development. If the appeal is allowed, then the certificate does not provide for any operational development and it was unreasonable of the Council to take it into account when determining the application.
4. With regard to the second reason, the provisions and principles of *Burdle*¹ are well known. Deciding a planning unit is an exercise of judgement which has to be reasonably carried out. The 2019 LDC is conclusively presumed despite the Council's suggestion that it was wrongly decided and it was unreasonable of the Council to assert that the recreational use is a standalone use. Their position on the planning unit is unclear at best.
5. In conclusion, the unreasonable behaviour is the approach taken to the first two reasons for refusal. These were not substantiated with any reasonable

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

application of the law and this resulted in wasted expense by the appellant in having to deal with them at appeal.

The response by Maidstone Borough Council

6. The application was to station caravans for holiday use. In the Council's view that use could only take place in this location if the caravans were fitted with floatation devices. The Council asked for clarification on what was encompassed in the application and were told it was an application to station caravans. This led to the first reason for refusal.
7. In order to determine the planning unit, it is necessary to know the use that is taking place, whether it is authorised or whether it has moved on. It is for the appellant to identify the planning unit by going through the planning history. He has taken it as read that to use the site to station 120 caravans is part of the planning history. The Council's view is that there is a lack of clarity around this subject which led to the second reason for refusal.

Reasons

8. The Guidance advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.
9. As I explained at the Hearing, planning permission may be granted for a house extension but the householder is unable to build it without building regulation approval. The LDC application was made under s192(1)(a) specifically for the stationing of caravans for holiday use and it is possible to consider whether that use would be lawful without having to go beyond the limit set by the application. Whether or not operational development is involved with the stationing of these particular caravans could be the subject of either another LDC application or a planning application. The Guidance states² the grant of a certificate applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements.
10. I find it was unreasonable of the Council to take operational development into account when determining the application and to persist with the subject at appeal. It was open to them to review their case when they received the appellant's Statement but it seems they did not. This led to wasted expense at the appeal.
11. With regard to the second reason, the Council were able to consider the appellant's very detailed, 10 page application covering letter, the planning history of the site and to take into account what they saw at their site visit. They may have reached a different conclusion on the planning unit from the appellant (as I did) but that conclusion still has to be reasonable.
12. The Guidance states³ that any LDC is to be conclusively presumed but the Council's interpretation of the 2019 LDC was unreasonable. With hindsight they may have had second thoughts about the 2019 description of the development but, nevertheless, that description remains as "existing use of land as ancillary recreational land *used in connection* (my emphasis) with Little

² Paragraph 4 Ref ID: 17c-004-20140306

³ Paragraph 2 Ref ID: 17c-002-20140306

Venice Country Park and Marina". Given this description, it is not a standalone use and as such it follows it is not a separate planning unit. The Council's view was therefore unreasonable.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated. This is in respect of the first and second reasons for refusal and that a partial award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maidstone Borough Council shall pay to the applicant, Mr Albert Lee, the partial costs of the appeal proceedings described in the heading of this decision and incurred in respect of the first and second reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent to, details of those costs with a view to reaching an agreement as to the amount.

D Fleming

INSPECTOR

Appendix 13: King's Copse Park, Oxfordshire – Lawful Development Certificates (P20/S0403/LDP & P21/S4232/LDP)



PLANNING

ELECTRONIC
VERSION

Planning Decision

P20/S0403/LDP

RS Hill and Sons Ltd
c/o RPS
20 Western Avenue
Milton Park
ABINGDON
OX14 4SH

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application No : **P20/S0403/LDP**

Description:

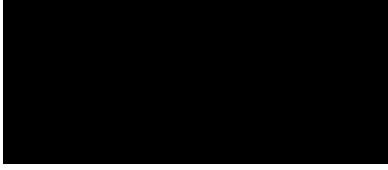
Confirmation that the proposed layout, comprising the stationing of 129 residential mobile homes (all falling within the definition of 'caravan' in the Caravan Sites and Control of Development Act 1960, as amended), with specific landscaping proposals, would not result in a material change of use of the caravan site at Kings Copse Mobile Home Park.

Land at **Kings Copse Lower Road Garsington OX44 9BL** which is shown edged red on the attached plan.

The South Oxfordshire District Council hereby certify that on 31st January 2020 the undertaking of the above would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

1. The use of the land edged red for stationing 129 mobile homes in the layout shown on drawing 1021-0001-13 would not comprise an intensification of such scale and kind, as to result in a significant and definable change in the character of the site and use. As such, as a matter of fact and degree, and having regard to both on-site and off-site impacts, the proposal would not constitute a material change of use. Therefore, planning permission for the proposal from the Local Planning Authority would not be required.





Head of Planning
16th April 2020

Notes

1. This Certificate is issued solely for the purpose of Section 191 and 192 of the Town and Country Planning Act 1990 (as amended).
2. This Certificate confirms that the use(s) or operation(s) specified in the application were, would be or would have been lawful on the date specified as the date when the application was correctly made, and therefore not liable to enforcement action under Section 172 of the 1990 Act.
3. This Certificate relates only to the precise definition of the use(s) or operation(s) described in the application and specified herein, and solely to the land specified on the plan attached hereto. The undertaking of any development which is materially different from that described or on land to which this Certificate does not relate may render the owner or occupier liable to enforcement or other action by the local planning authority.
4. In circumstances where a Certificate is issued in relation to a proposed use or operation not yet implemented, Section 192(4) of the 1990 Act (as amended) provides that the lawfulness of a described use or operation is only conclusively presumed where there is no change in the material circumstances before the use in question is instituted or the operations begun. Accordingly you should bring any change in circumstances to the notice of The Local Planning Authority before commencing work.
5. If you are aggrieved by the decision of the Council you may appeal to the Secretary of State for the Environment Transport and the Regions in accordance with section 195(1) of the Town and Country Planning Act 1990. If you decide to appeal there is no time limit on the right to appeal, except in the case of appeals under S26K of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) which is limited to six months from the date of the decision.

The exercising of this right of appeal should be undertaken by giving written notice to the Secretary of State for the Environment. Formal Notice of appeal may be obtained from :

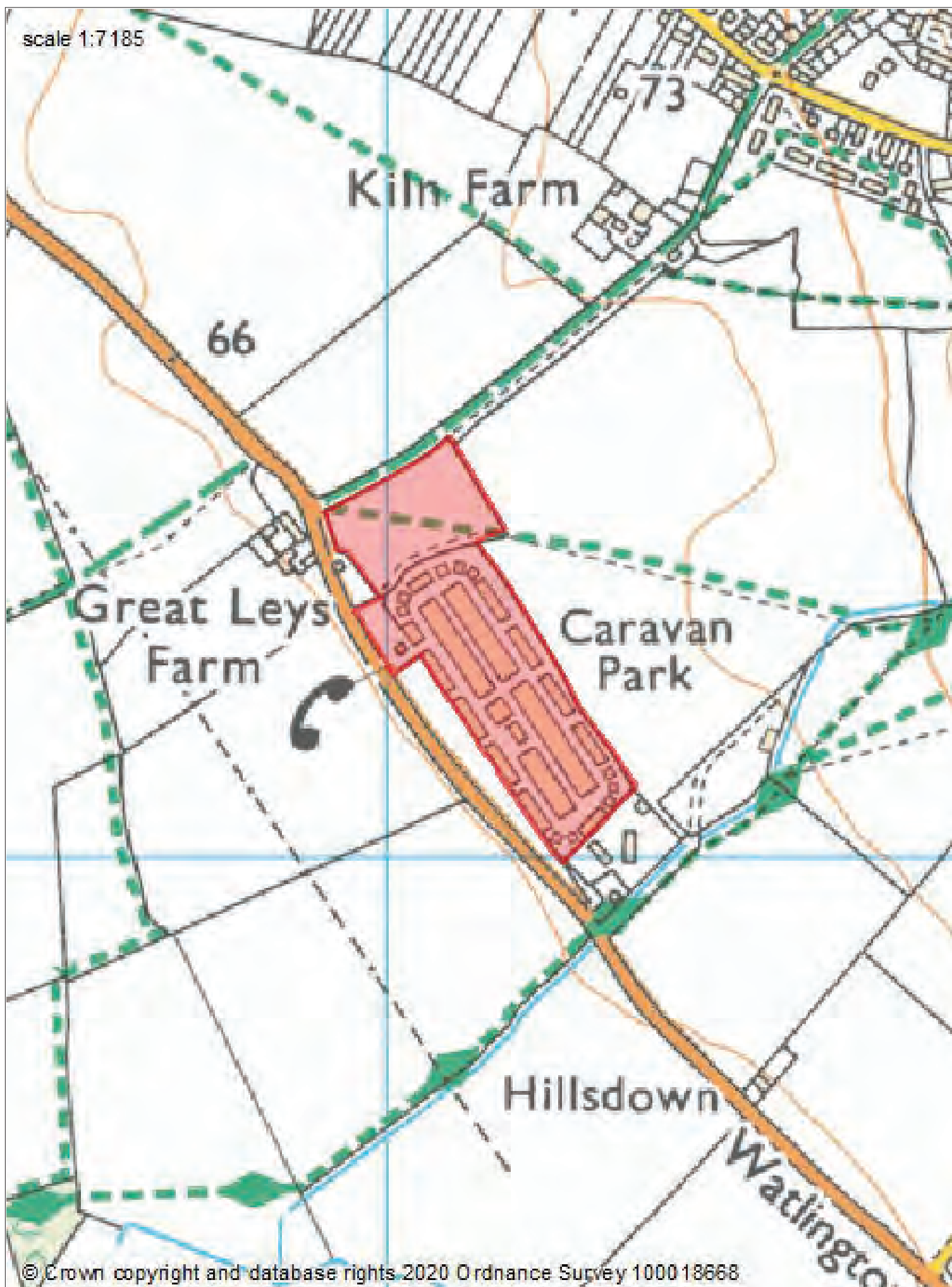
The Planning Inspectorate
Customer Support Unit
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
Telephone : 0303 444 5000
www.planningportal.gov.uk
email: enquiries@pins.gsi.gov.uk

to whom any appeal should be subsequently addressed.

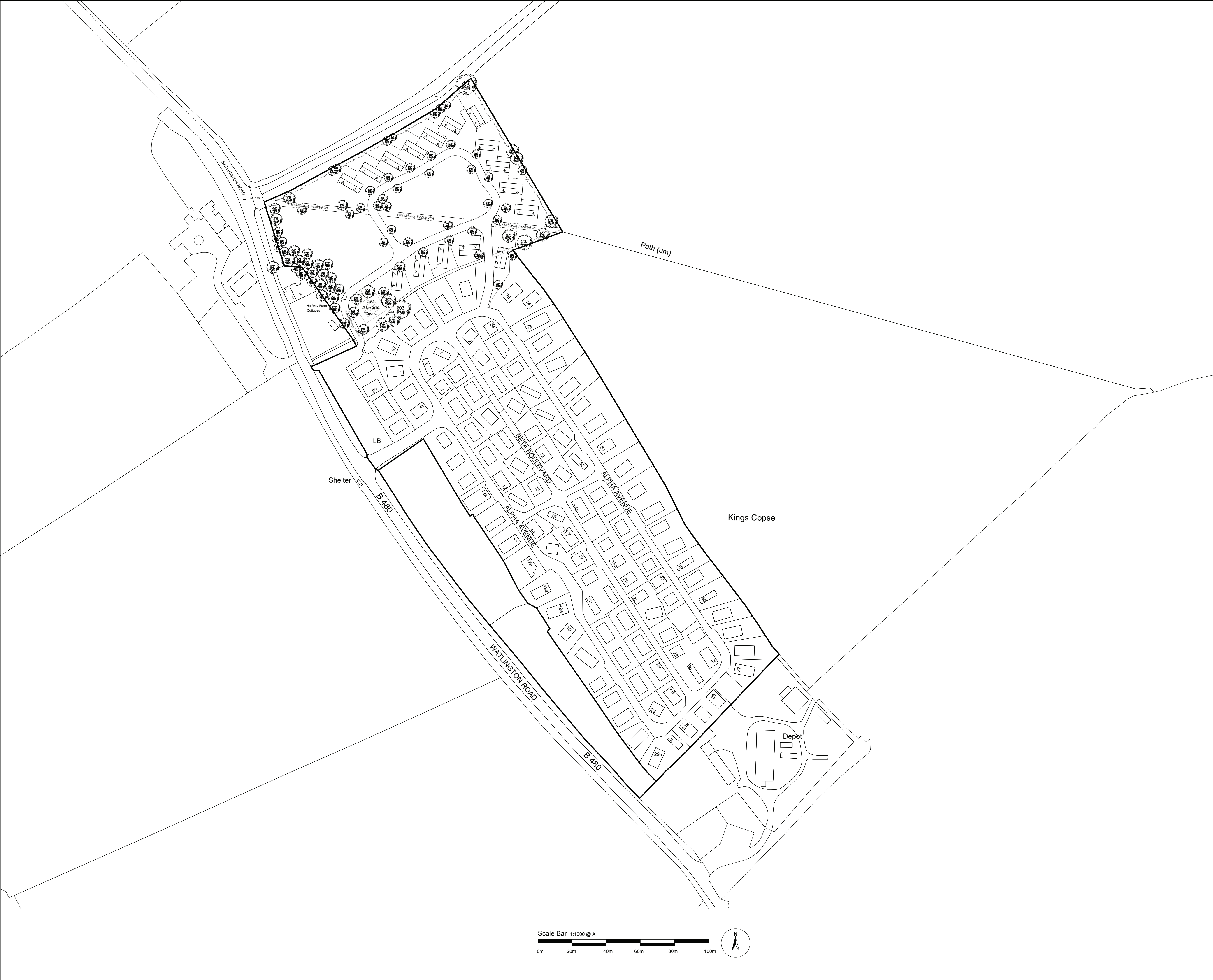
OTHER INFORMATION

The Planning Portal contains a wide range of helpful planning-related guidance and services. You may wish to view their website (www.planningportal.gov.uk).

scale 1:7185



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Legend

 Application Boundary

 Other land under ownership of applicant

 Park home Unit

Rev	Description	By	CB	Date



20 Western Avenue, Milton Park, Abingdon, Oxfordshire, OX14 4SH
T: +(0)1235 821 888 E: rps@rpsgroup.com

Client **R S Hill & Sons Ltd.**

Project **Kings Copse Park**

Title **Site Layout Plan**
(1:1000 Version)

Status	Drawn By	PM/Checked by
Final	AJC	NG

Job Ref	Scale @ A1	Date Created
PPS1021	1:1000	Jan 2020

RPS Drawing/Figure Number	Rev
1021-0001-13	-

rpsgroup.com

PLANNING

ELECTRONIC
VERSION

Planning Decision

P21/S4232/LDP

RS Hill and Sons Ltd
c/o Laister Planning Limited
Oddfellows Hall, Ground Floor
London Road
Chipping Norton
OX7 5AR

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application No : **P21/S4232/LDP**

Description:

Confirmation that the proposed layout (as shown on drawing no. 1021-0001-10), comprising the stationing of 145 residential mobile homes (all falling within the definition of 'caravan' in the Caravan Sites and Control of Development Act 1960, as amended), would not result in a material change of use of the caravan site at Kings Copse Mobile Home Park.

Land at **Kings Copse Lower Road Garsington OX44 9BL** which is shown edged red on the attached plan.

The South Oxfordshire District Council hereby certify that on 8th October 2021 the undertaking of the above use was lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

1. The use of the land edged red for stationing 145 mobile homes (all falling within the definition of 'caravan' in the Caravan Sites and Control of Development Act 1960, as amended) as shown on drawing no.1021-0001-10 does not comprise an intensification . As such, as a matter of fact and degree, and having regard to both on-site and off-site impacts, the proposal does not constitute a material change of use of the land. Therefore, planning permission from the Local Planning Authority is not required and on the date of application, the land use described is considered lawful.

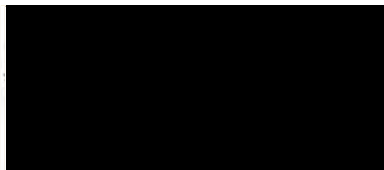


Reason for Decision

The use of the land edged red for stationing 145 mobile homes (all falling within the definition of 'caravan' in the Caravan Sites and Control of Development Act 1960, as amended) as shown on drawing no.1021-0001-10 does not comprise an intensification. As such, as a matter of fact and degree, and having regard to both on-site and off-site impacts, the proposal does not constitute a material change of use of the land. Therefore, planning permission from the Local Planning Authority is not required and on the date of application, the land use described is considered lawful.

In accordance with paragraph 38 of the National Planning Policy Framework the Council takes a positive and proactive approach to development proposals. The Planning Service works with applicants/agents in a positive and proactive manner by offering a pre-application advice service and by advising applicants/agents of issues that arise during the processing of their application and where possible suggesting solutions to problems.

Note : A more detailed explanation is available in the officer's report, available in the application case file.



Head of Planning
1st November 2021

Notes

1. This Certificate is issued solely for the purpose of Section 191 and 192 of the Town and Country Planning Act 1990 (as amended).
2. This Certificate confirms that the use(s) or operation(s) specified in the application were, would be or would have been lawful on the date specified as the date when the application was correctly made, and therefore not liable to enforcement action under Section 172 of the 1990 Act.
3. This Certificate relates only to the precise definition of the use(s) or operation(s) described in the application and specified herein, and solely to the land specified on the plan attached hereto. The undertaking of any development which is materially different from that described or on land to which this Certificate does not relate may render the owner or occupier liable to enforcement or other action by the local planning authority.
4. In circumstances where a Certificate is issued in relation to a proposed use or operation not yet implemented, Section 192(4) of the 1990 Act (as amended) provides that the lawfulness of a described use or operation is only conclusively presumed where there is no change in the material circumstances before the use in question is instituted or the operations begun. Accordingly you should bring any change in circumstances to the notice of The Local Planning Authority before commencing work.
5. If you are aggrieved by the decision of the Council you may appeal to the Secretary of State for the Environment Transport and the Regions in accordance with section 195(1) of the Town and Country Planning Act 1990. If you decide to appeal there is no time limit on the right to appeal, except in the case of appeals under S26K of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) which is limited to six months from the date of the decision.

The exercising of this right of appeal should be undertaken by giving written notice to the Secretary of State for the Environment. Formal Notice of appeal may be obtained from :

The Planning Inspectorate
Customer Support Unit
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
Telephone : 0303 444 5000
www.planningportal.gov.uk
email: enquiries@pins.gsi.gov.uk

to whom any appeal should be subsequently addressed.

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BUILDING OVER GAS MAINS AND SERVICES

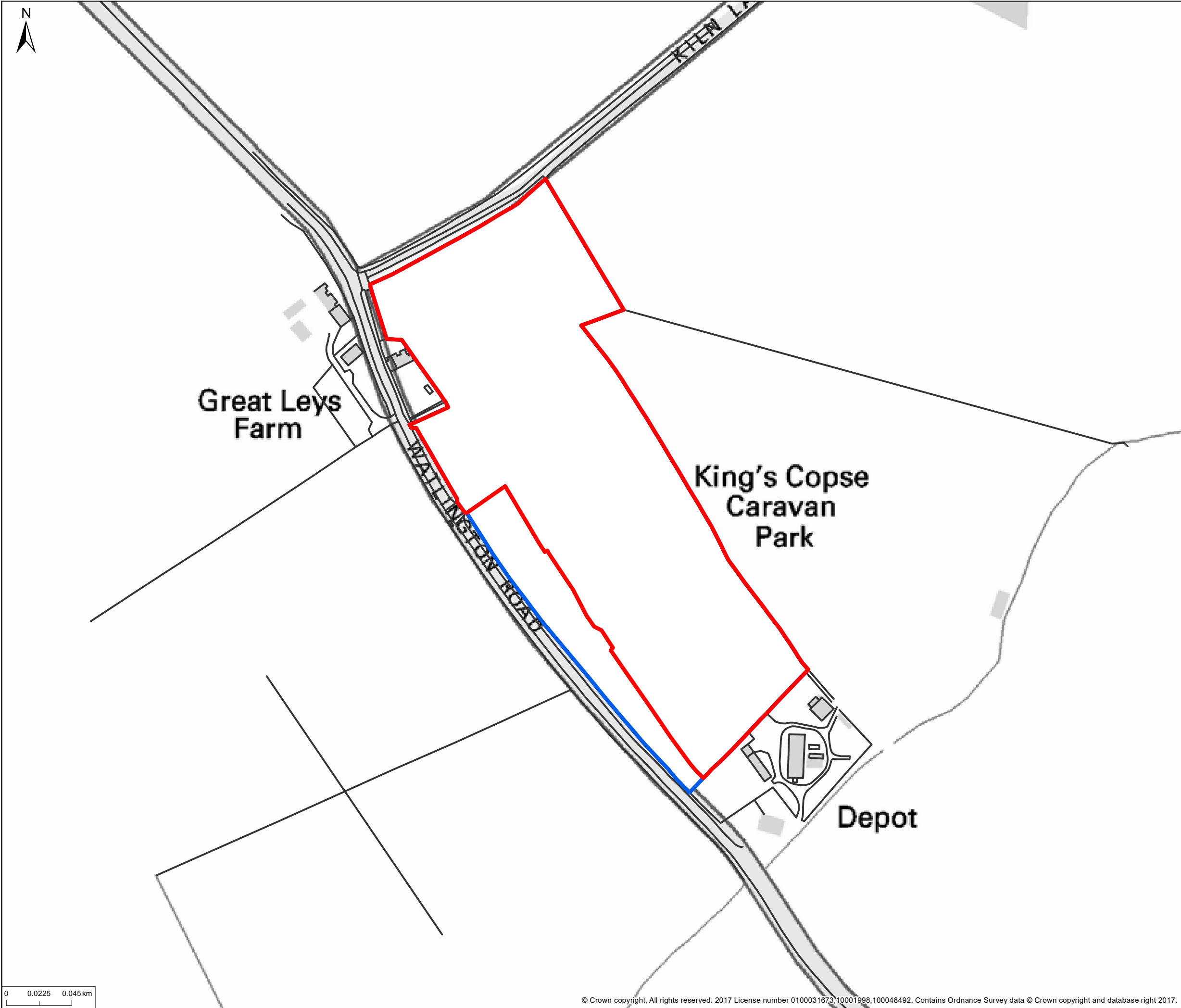
Please note before you plan to dig, or carry out building work within the SGN gas network, you must:

1. Check your proposals against the information held at <https://www.linesearchbeforeudig.co.uk/> to assess any risk associated with your development **and**
2. Contact the SGN Plant Protection team to let them know. Plant location enquiries must be made via email, but you can phone SGN with general plant protection queries. See SGN details below: Phone 0800 912 1722 or email plantlocation@sgn.co.uk

For further information please refer to:

<https://www.sgn.co.uk/damage-prevention>

<https://www.sgn.co.uk/help-and-advice/digging-safely>



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- Legend**
- Application Boundary
 - Other land under ownership/control of applicant

Rev	Description	By	CB	Date



20 Western Avenue, Milton Park, Abingdon, Oxfordshire, OX14 4SH
T: +44(0)1235 821 888 E: rps@rpsgroup.com

Client R S Hill and Sons Ltd

Project Kings Copse, Garsington

Title Site Location Plan

Status	Drawn By	PM/Checked by
FINAL	AJC	NG
Job Ref	Scale @ A3	Date Created
PPS1021	1:2500	June 2019

RPS Drawing/Figure Number	Rev
1021-0016-01	-

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laister

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01608 238282

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Laister Planning Ltd, Oddfellows Hall, Ground Floor, London Road
Chipping Norton, Oxfordshire OX7 5AR

