

Appendix 12 – The White Horse Park Appeal Decision





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.
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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.
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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

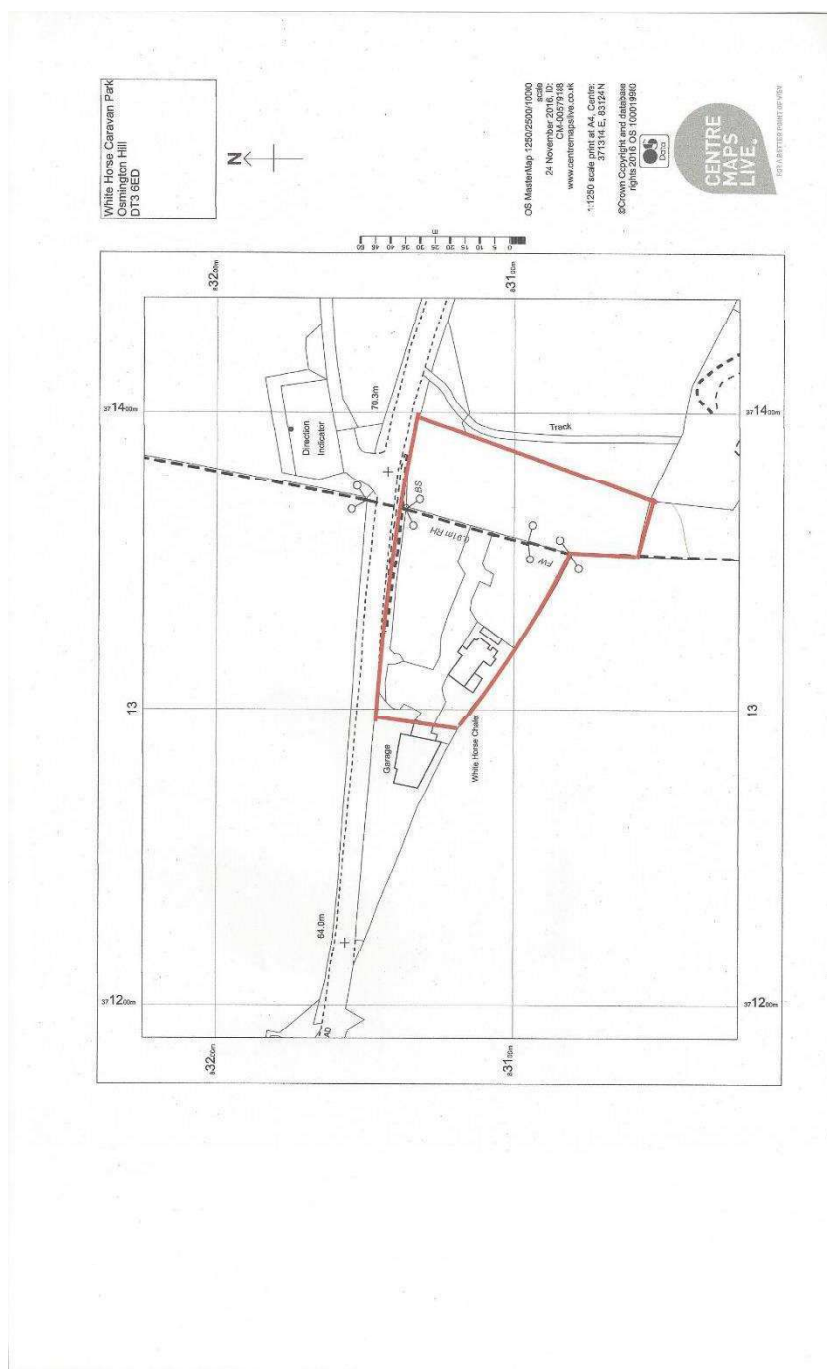
This is the plan referred to in the Lawful Development Certificate dated: 03 June 2019

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



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