



Appeal Decision

by D E Morden MRTPI

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

Decision date: 01 October 2018

Appeal Ref: APP/U1240/X/17/3186342

Gundrys Farm, School Lane, Three Legged Cross, Wimborne, BH21 6RU

- 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 Royale Parks Ltd against the decision of East Dorset District Council.
- The application Ref 3/17/1464/CLP, dated 31/5/2017, was refused by notice dated 7/9/2017.
- 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 the land edged red on the application plan for the siting of up to 54 caravans throughout the year for the purposes of human habitation.

Decision: The appeal is dismissed.

Preliminary Matters

1. A site visit was to be arranged for the week commencing 17 September 2018 but the parties agreed that there was no dispute about what was taking place on site and the appeal was concerned with interpreting the existing LDCs on the land and whether what was proposed amounted to a material change of use or not. In those circumstances it was agreed that a formal visit to the site was unnecessary and the appeal could be determined on the basis of the representations made.

Reasoning

2. The application site consists of two distinctive plots on the site and each has a separate LDC setting out its lawful use. The northern field was granted an LDC on 4 March 1997 for the use of the land 'Between the period from Easter to the end of September each year (*for*) use as a caravanning and camping site for up to 24 caravans and tents (24 in total making no distinction between caravans and tents)...'.
3. The southern field has the benefit of an LDC granted on 28 May 2010 for 'the use of the land as a campsite for up to 30 caravans, tents and motorhomes (20 in total making no distinction between caravans, tents and motorhomes) between Easter and 30 September of each year only'.
4. On a minor point raised by the appellant (but one which does not affect the principle about which the appeal is made) the LDCs are lacking in defining the

exact start date in any year that the use can commence. It would have been better to state Good Friday, Maundy Thursday, Palm Sunday or some other Easter 'date' as the start date to be clearer but one is only concerned about four or five days over a period that stretches to about 6 months depending upon when Easter (and the Sunday is Easter day) actually occurs; it can be as early as 22 March and as late as 25 April.

5. The appellant claimed in the statement supporting the application and then the appeal that the two LDCs made no reference or distinction as to the nature of the occupation of the site. It is then stated that any form of occupation of the caravans would be lawful and whether or not the previous uses might have been touring caravans for holiday purposes this would not alter the scope of the lawful use which would include static caravans occupied as a person's main residence.
6. In my view that is not necessarily correct and there is a difference between a planning permission granted without any conditions or appropriate conditions (as in the appeal decision submitted with the appeal papers)¹ and an LDC which specifies in exact terms the use considered to be lawful. An LDC has to be considered differently and not on the basis of *I'm Your Man v SSETR [1999] 77 P&CR 251* (referred to in that same appeal decision) as it is not possible to impose conditions on an LDC; it is not a planning permission. The description will provide in exact terms what is lawful and any change has to be considered against that to determine whether there is a material change of use from what has been declared lawful.
7. Also, even if I was comparing like with like in terms of the type of application/appeal, in the case referred to the site was already in use for 10 continuous months of the year (with occupation not allowed in January and February); this site is only permitted to be used for up to six or seven months (depending when Easter occurs) in any year. That has implications when one is considering whether a new use on the site is materially different to what exists and it is not actually a similar situation in my view.
8. This application describes the proposed use as being for human habitation. 'Habitation' is not defined in the Town and Country Planning Act 1990 as amended and neither is 'caravanning', 'camping' nor 'campsite', either in that Act or the relevant Caravan Sites Acts (1960 and 1968). They should, therefore, be given their normal everyday definition and meaning. In the Oxford English dictionary habitation is defined as 'the fact of living somewhere'; caravanning is defined as 'the activity of spending a holiday in a caravan'; camping is defined as 'the activity of spending a holiday living in a tent'; and campsite is defined as 'a place used for camping especially one for holidaymakers'.
9. The earlier LDC specified the exact use considered lawful as for '... use as a caravanning and camping site for up to 24 caravans and tents...'. The northern site was granted an LDC for this specific use for up to 24 caravans and tents and included in the definition was the acceptance that it could be all caravans, all tents or any mix of the two. For many years the site had a licence from The Camping and Caravanning Club which should have seen the site only occupied by members and no more than five caravans and ten tents at any one time but this licence was withdrawn in mid 1996 as both the

¹ APP/J3720/X/15/3003762

numbers and the mix were ignored and exceeded regularly. It was clearly a holiday use only and would encompass both short stays (one night) and longer stays (maybe up to a few weeks). The letters from the 1990s on the file showed that there was generally a mix of caravans and tents and sometimes only one of the two were present.

10. The LDC for the southern field specified the exact use as for '... the use of the land as a campsite for up to 30 caravans, tents and motorhomes' and again the number of each could be 30 or any mix of the three different types. Again it is clear from the definitions that a campsite is for camping and camping is a holiday activity.
11. The appellant argued that a caravan site is a caravan site and it does not matter how the caravans (assuming only caravans were on either site and that could be the situation) are occupied. The appellant also argued that the Council was wrong to state that the issue of the LDCs meant that the sites could not be occupied at other times. The second point is not really relevant in this case as the appeal is not about the same use for 12 months rather than six or seven and whether that is materially different. It does however add weight to the argument that the use would be materially different in character and appearance if the ramifications of the appellant's arguments are taken into consideration.
12. The question to be determined in this appeal is whether the use for human habitation i.e. 'living' in which would be on a permanent or long term basis is a materially different use to a recreational one which would in my view consist of a non-permanent occupation of the caravans, tents or motorhomes on the sites.
13. In my view the activities associated with the two different types of uses would be materially different particularly in terms of traffic and vehicle movements to and from the site. People just camping there as has been the situation so far would usually have one vehicle (or none) whereas there would be a number (the UK average is over 20%) who would have two cars; there could be more depending upon the age of children living there as well as their parents. Some may run a business so there could be vans and small trucks rather than just cars.
14. Traffic movements to and from the site would be different with people leaving for and returning from work every day; school runs being undertaken in the morning and afternoon. These would result in a materially different level and pattern of traffic going to and from the site by those occupying it. In addition if people were living on the site there would be daily visits from the postman who all now arrive in small vans, there would be parcel delivery trucks which have grown in numbers considerably as people shop online; there is a growing number of people who have their groceries delivered and like the private parcel delivery companies these arrive in medium size lorries. Friends and relations would visit or there could be family gatherings to celebrate particular
15. The level and pattern of traffic movements to and from the site would be totally and therefore, in my view, materially different to what has gone on and still goes on at present; it would also be taking place throughout the year rather than just half of it. I consider that would be sufficient to conclude that the use proposed would be materially different to what takes place under the LDC on both sites.

16. It is also extremely likely that the site would look very different and physical changes would take place that would not occur if it remained as currently used. As the aerial and other photographs included in the papers show, the tents/caravans and/or motorhomes are sited around the edge of the two fields almost under the trees, fairly close together and the large fields are left untouched for the most part. There is one non grass surfaced 'track' (or it's maybe a worn grass surface although that looks less likely) running along the eastern side of the northern field which provides access to the southern one. It is also possible to make out tracks in the grass where people have driven across the southern field in particular to reach the sides where the camping spots are located.
17. Following the appellant's argument a permanent occupation all year round would require roads of some description to access the plots in winter time. If families were occupying static caravans there would probably be a number that would have more than one vehicle as the national average is over 20. If the land was to be left in the state it is now it is likely that access to some parts would become impossible at certain times in the winter.
18. The site would look very different as the plots are too close together to be allowed on a permanent basis under site licensing conditions. Other than the 'track' running through the northern field everything on site is grassed. There would need to be proper access to the plots all year and there would need to be hard standings on which to site the caravans.
19. At present there are no additional features such as flower beds, boarded patio areas either on the ground or outside the caravans at a higher level. There are no fences demarcating plots, no ancillary structures, no boxes for mail delivery and no buildings beside any of the existing caravans/motorhomes and tents; or at least there were none in any of the photographs. It is highly unlikely there would have been any on the basis that the land has been occupied so far but that would simply not be the case if the site was being used for 'human habitation' be that for six months or twelve.
20. Two appeal decisions were referred to in final comments by the appellant in support of the claim that the site could be used for human habitation without the need for further planning permission. The inspector in paragraph 3 in the second case (APP/X/C/10/2132189) sets out that the Council tried to limit the scope of an LDC by the imposition of conditions which clearly cannot happen and so had granted a use without limitation; that is not the case in this appeal. The other decision (APP/V2225/C/02/1088659 & 60) also states in paragraph 8 that an LDC had been granted for the use of the land as a caravan site with occupation between March and October inclusive. At paragraph 9 the inspector went on to state that the use before him was whether the use as a caravan site for one caravan occupied between March and October was materially different to use as a caravan site occupied at any time. Again that is not comparable with this appeal.
21. More pertinent, in my view, regarding a use being materially different is the case of *R(oao John Childs v (1) FSS and (2) Test Valley BC [2005] EWHC 2638 (Admin), JPEL 2006, pp 1326 – 1337* where the Court held that whilst the site had an LDC that specified that 4 residential caravans (i.e. a habitation use) could be sited on a large field all year round (it was capable of having 50 or more caravans sited on it), four appeals (for 50, 30, 15 and even 8 caravans)

would result in a materially different use and permission was needed. The inspector's conclusion that there was a material change through intensification (8 caravans instead of 4) was based on a change in the character and appearance of the site and the activity associated with that change in numbers. The Court upheld that conclusion.

22. In this appeal I conclude that there would similarly be a material change in the character and appearance of the site and a material change in the activity associated with the use even if it was only taking place over the same six months. That materially different character and appearance of the use would be magnified if it were to take place over 12 months as the appellant claims could happen without permission. In the *Childs* case it was determined that the LDC certified a specified number of caravans on the land was the lawful use and an increase in the number could amount to a material change of use. In this case the LDCs certify that a specific type of activity on the land is lawful and in my view a change in the character and appearance of the use and the activities that occur as part and parcel of that use could and does amount to a material change of use.
23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land edged red on the application plan for the siting of up to 54 caravans throughout the year for the purposes of human habitation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D E Morden

INSPECTOR



Development Management
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Christchurch
BH23 9JQ

Town & Country Planning Act 1990

**Section 192 of the Town & Country Planning (Development Management Procedure)
(England) Order 2015: article 39**

Royale Parks Ltd
c/o EJ Planning Ltd
PO Box 310
Malvern
WR14 9FF

Notification of Refusal of Certificate a Lawful Use or Development

Application reference no: 3/17/1464/CLP

Date Received: 31/05/2017

The East Dorset District Council hereby certify that on the 31 May 2017 the proposal of development/use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate would not be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 for the following reasons:

1. The description of the development is absent from the application form; the description heading the supporting statement is imprecise and does not express in complete and correct terms that which is proposed, namely a permanent residential use. The Council is not entitled to change the description.
2. The proposal proposes a land use wider than the subsisting lawful use of the land and would amount to a material change of the definable character of the use of the land; this would be contrary to s55 of the Town & Country Planning Act 1990 (as amended) and require planning permission.

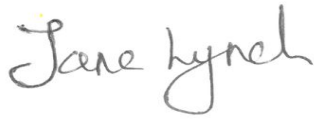
First Schedule

Use of land edged red for the siting of up to 54 caravans throughout the year for the purposes of human habitation

Second Schedule

Gundrys Farm, School Lane, Three Legged Cross, BH21 6RU

Signed



Head of Planning

Decision Date: 07 September 2017

Notes

1. This certificate is issued solely for the purposes of section 192 of the Town & Country Planning Act 1990 (as amended).
2. It certifies that the proposed development/use specified in the First Schedule to take place on the land described in the Second Schedule would not be lawful on the specified date, and therefore could be liable to enforcement action under Part 7 of the 1990 Act on that date.
3. This certificate applies only to the extent of the proposed use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which would be materially different to that described or which relates to other land may render the owner or occupier liable to enforcement action.

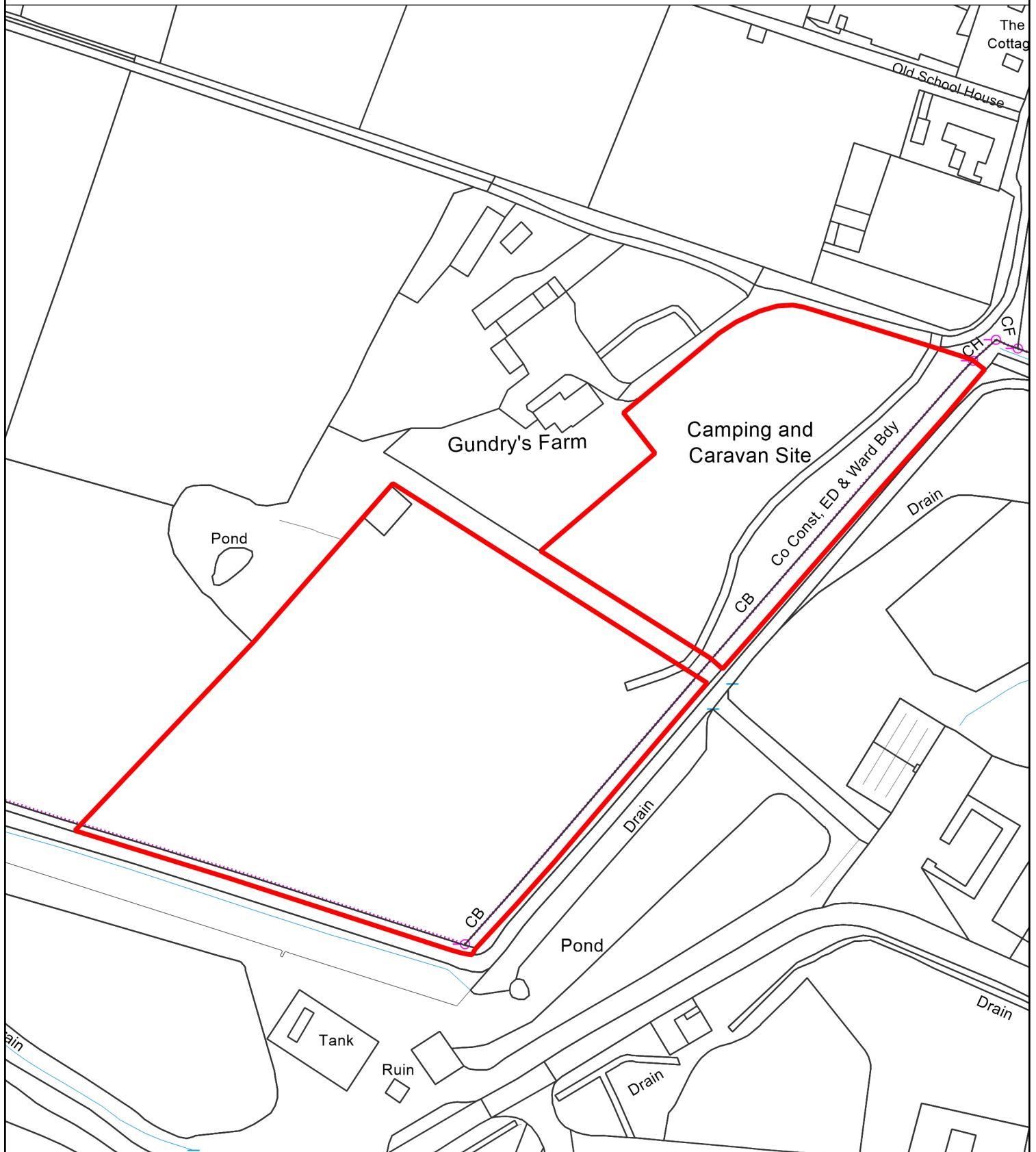
Appeals

- If you are aggrieved by the decision of the local planning authority you can appeal to the Secretary of State under Section 195 of the Town and Country Planning Act 1990. There is currently no time limit within which to appeal however this is normally expected to be received within 6 months.
- Appeals must be made using the Appeals Casework Portal which is available at <http://www.planningportal.gov.uk/planning/appeals/> alternatively, please call The Planning Inspectorate on 0303 444 5000.
- Please note that only the applicant possesses the right of appeal.

TOWN AND COUNTRY PLANNING ACT SECTION 192 TOWN AND COUNTRY

(Development Management Procedure)

(England) Order 2015, Article 39



Address: Gundrys farm School lane Three Legged Cross BH21 6RU

Certif No: 3/17/1464/CLP

Date: 07/09/2017

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