



Development Management
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Town & Country Planning Act 1990

Section 191 of the Town & Country Planning (Development Management Procedure) (England) Order 2015: article 39

Mr Ben Eiser
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Refusal of Certificate of Lawfulness for an Existing Use or Development

Application reference no: **3/17/2370/CLE**

The East Dorset District Council hereby certify that on 23 August 2017 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged red on the plan attached to this certificate, would not be lawful within the meaning of section 191 of the Town & Country Planning Act 1990 for the following reasons:

The Applicant has failed to provide the Council with sufficient evidence to establish that the land described in the Second Schedule and as edged red has been used continuously for the purposes subject of the development as described in the First Schedule for the past 10 years.

First Schedule

Use of the land for the siting of up to 100 caravans from Easter to the end of October

Second Schedule

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

Signed 

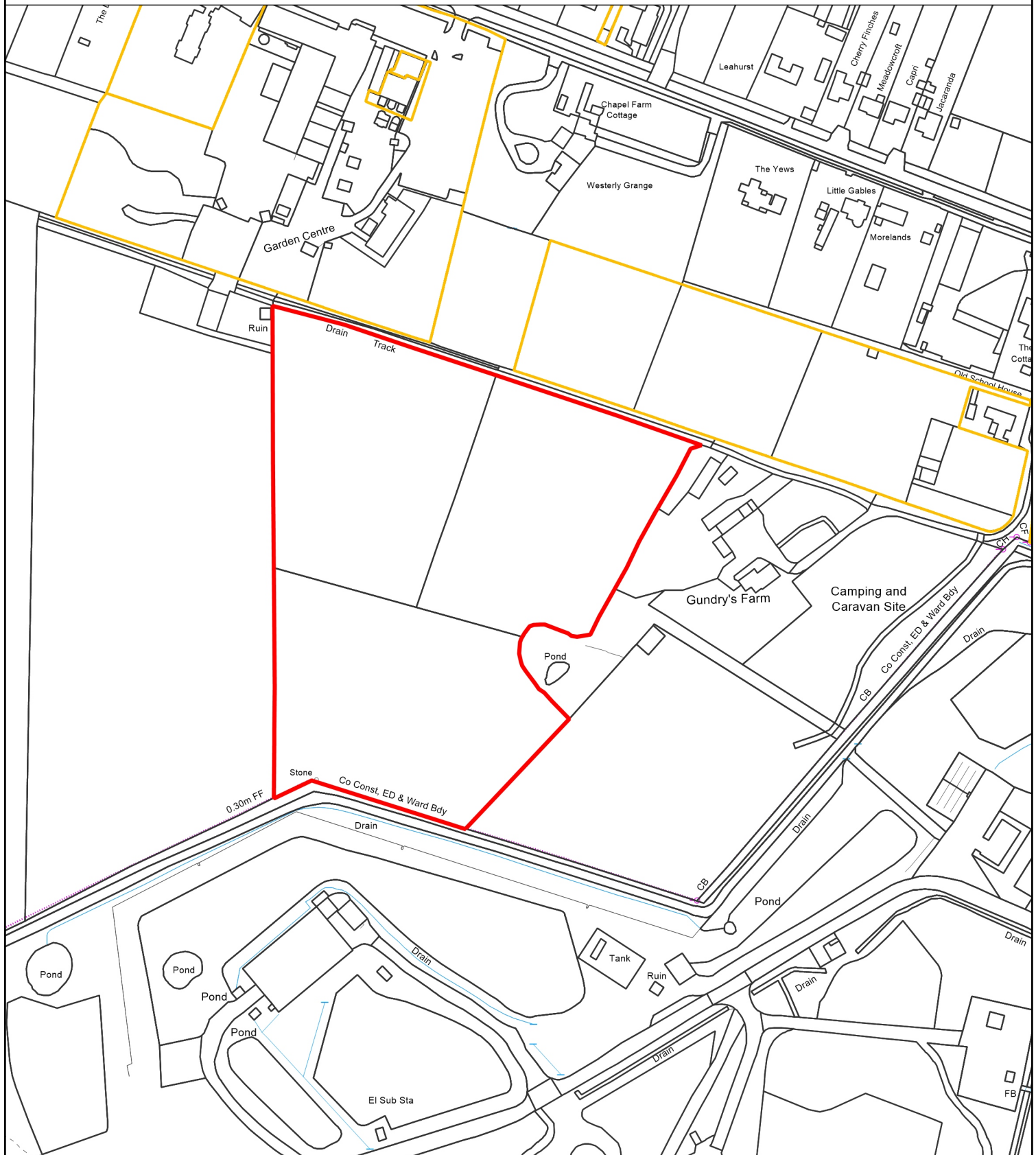
Head of Planning

Decision Date: 7 November 2017

TOWN AND COUNTRY PLANNING ACT SECTION 191 TOWN AND COUNTRY

(Development Management Procedure)

(England) Order 2015, Article 39



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

Certif No: 3/17/2370/CLE

Date: 07 November 2017

Printed By: Development Management

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Date Printed: 07 November 2017

Notes

1. This certificate is issued solely for the purposes of section 191 of the Town & 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 would not be lawful on the specified date, and therefore would 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 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.

Application	3/17/2370/CLE	Delegated
Location	Gundrys Farm, School Lane, Three Legged Cross	
Proposal	Use of Land for the siting of up to 100 caravans from Easter to the end of October	
Case Officer	David Lloyd	
		Statutory Expiry Date 18 October 2017

1.0 LEGISLATION

Pursuant to a determination, regard is made to the following sections of the Town & Country Planning Act 1990 (as amended)

1.1 **S191 Certificate of lawfulness of existing use or development.**

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) 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 then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a “planning

enforcement order”) in relation to the matter has not expired,
(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
- (b) section 5(2) of the Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the Environmental Protection Act 1990.

1.2 S192 Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether—

- (a) any proposed use of buildings or other land; or
- (b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(2) A certificate under this section shall—

- (a) specify the land to which it relates;
- (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use or operations to be lawful; and
- (d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

1.3 S193 Certificates under sections 191 and 192: supplementary provisions.

(1) An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by local planning authorities.

(3) In particular, such an order may provide for requiring the authority—

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and

(b) to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

(5) A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 69 references to applications for planning permission shall include references to applications for certificates under section 191 or 192.

(7) A local planning authority may revoke a certificate under either of those

sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

1.4 Immunity from Enforcement Action - S171B - Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

1.5 Planning Practice Guidance

The PPG provides the latest advice on planning practice. Some relevance to these applications appears to be from the following -

Lawful Development Certificates

<https://www.gov.uk/guidance/lawful-development-certificates>

1.6 Procedural Matters

Timing of Determination

The application was received by the Council on 23/08/2017 and by the case officer on 14 September 2017.

Request for Extension of Time

[Town & Country Planning (Development Management Procedure) Order 2015]

None required.

2.0 APPLICATION SUBMISSIONS

2.1 The following documents are submitted –

1. Application Form
2. Application Location Plan
3. Planning Supporting Statement
4. Statutory Declaration of Mr. Basil Pitt (former owner) formed of 4 pages

2.2 The description is not placed on the application form but is found heading the planning support statement – *“use of land for the siting of up to 100 caravans from Easter to the end of October.”* This report will determine the application solely on this basis.

2.3 The application concerns agricultural paddocks to the west of the farm complex and adjacent and west to the caravan site paddocks subject of application 3/17/1464/CLP. That application was refused on the 7 September 2017. The proposed use of the land was determined to be wider than the subsisting lawful use of the two caravan and camping paddocks and would amount to a material change to the definable character of the land use.

2.4 The planning supporting statement offers brief reference to the planning history, namely to the two paddocks identified above.

The planning statement points to the statutory declaration as the source of evidence of the use of the application land. The claim of lawfulness is put in the context of the site being known and accepted as an operational caravan site, and on the premise it had a customer base (presumed from the two eastern and lawful paddocks), the application land is presented as being also incorporated as there was *“no physical barrier to prevent the fields in question from being used for such purposes”*.

2.5 The statement presents aerial photographs as evidence from the years 2002, 2005, 2009, 2012, 2014 and 2017. The statement attempts to persuade, although the aerial images present evidence for a single moment in time, *“it is quite **possible** that the picture would differ if taken on different days of the week”*. Furthermore the statement claims that there is no apparent differences between the character of the application land and the existing

caravan/camping paddocks. The statement further attempts to persuade that where no caravans can be seen the character of the land compliments the character of the existing lawful paddocks and therefore falls to be considered as a caravan site. The land, it claims, has the appearance of a field consistently throughout nonetheless.

- 2.6 The statutory declaration of Mr Basil Pitt details ownership of the site between 2007 and 2016 inclusive. Mr Pitt has some knowledge of the site prior to the purchase as his wife was related to the owners. The application land, it is believed, is referred within the stat.dec as field 3, however the plan attached to it labels the application land field B. This provides some confusion however this report will presume the matter resolved and workable on this basis.

The basis of the use of the application was as follows –

1. The application land was used as a result of a need to increase the scale and manner in which “the site” was run in order to provide a sufficient income. *It shall be presumed from the reference to “the site”, that it is referred to all land in ownership from a commercial perspective.*
2. The application land was used on a regular basis (from 2006) for caravanners and camping visitors.
3. The application land was called “the Rally Field” and used for bookings from the exempted organisations, such as the Caravan and Camping Club.
4. The application land can accommodate up to 100 caravans and was laid out in an informal way and used for groups of caravans.
5. “The site” was open for the season of Easter to the end of October and the application land was used in the same manner.
6. The application land was mown and kept available solely for use as part of the caravan site.

2.7 **3rd party Correspondence Received**

Evidence/Comments which supports the application

None.

Evidence/Comments which contradicts the claims

Three adjacent landowners provide the following observations -

- Between 2011 and 2016 Mr Pitt would close the gates in September and go on holiday.
- The application land was used occasionally for caravan club rallies;
- In 2012 lambs were kept on the application land and invited to see them;
- The current roads and toilets have been added to the site recently;
- Hook ups are a recent addition to the application land;
- (See Appendix 1) Poster of a rally by The Caravan Club West Hampshire Centre (20-25 July 2017) provided. Link - <https://www.whampshirecc.co.uk/>
- Evidence of a comment on TripAdvisor - the caravanner has

experience of the site for 8 years, three fields in use, the application land called “back field for rallies”. The current layout not indicative of that use. The site responded to the comment which suggests that the numbers on site might have only been recently increased.

- The claims reflect mostly the management of the site by the current owners rather than the previous one;
- Touring caravans and tent users come and go to the eastern paddocks in the normal way.
- A roof on a shed on land was placed some 5 years ago. The Trip Advisor image is therefore recent.
- A crop of hay taken from the field between late summer 2015 to summer 2016 on the application land. No caravans or tents in situ during that period. Sheep observed grazing also on the more western parts of the planning unit.
- In 2015/2016 the paddock known as Sunrise used for a club rally, 20 caravans in 2015 and 50 caravans in 2016. Only for short periods.
- During peak times the lawful paddocks appear to accommodate as many as 80 units.
- The site closing at the end of October was noticeable when compared to movement and activity during the Easter to September season.
- At the end of 2016 sense of construction works taking place on the land – track to the application site laid, new fencing, building works of new shower and toilet blocks, rubbish caught in windy conditions blew out onto adjacent lands
- Applicant took control of the site around December 2016. By March capacities had increased and have been in constant use. Volume of traffic increased, road blockages, standing vehicles waiting to enter the site, traffic constant, walkers and cyclists also increased.
- Noise levels have increased.
- Dog-fouling noticeable;
- Some disturbance/risk of disturbance considered to have taken place in adjacent land particularly in relation to horses.
- Some vandalism on adjacent lands occurred
- 2006 it was a family run farm with small amount of caravans, open Easter to September. In 2009 the site appeared to be more used.

A former resident at the site

- Worked and stayed on site as a contractor in 2008 and 2009. Lived in one of the static caravans (now not there). There were only electric hook-ups in field 1 by the main gates and 1 set of toilets. Sheep grazed in the application land.

Telephone enquiries arising from the application

One enquiry has been received asking whether seasonal pitches would be granted planning permission at the site.

2.8 Consultations

Natural Environment Team Dorset County Council

Suggests biodiversity considerations are identified.

The comments do not provide any evidence of the historical facts required to determine s191.

Natural England

None received

3.0 COUNCIL EVIDENCE

- 3.1 In light of the slim evidence submitted by the Applicant, the Council must exhaust all channels to verify the likelihood that the land has been consistently used for up to 100 caravans throughout a period of at least 10 years. A refusal of the application would be likely on the basis of the evidence to hand.

3.2 Planning History

There are no applications and decisions solely for the application land.

Within the planning decisions for land outside of this application land, (the existing and lawful caravan and camping paddocks, the farmhouse complex and the caravan storage area) no evidence of caravanning and camping use of the application land is found.

The following planning decisions were scrutinised – see appendix 2 for screengrabs of evidence to support/refute this application's claims –

3/96/0663 – attention focussed on the upper lawful paddock;

3/96/9024 – acute reference to only two fields in use for caravan/camping.

3/10/0135/CLU – this provides affidavits by Lorraine Pitt and Basil Pitt and places emphasis of caravanning and camping activity in three areas – the two lawful paddocks and the area claimed as storage. Aerial images are submitted in evidence. Caravanners recall rallies being held within the lawful paddocks, not the application site. The file contains a PCN return from Mr Pitt with exclusive detail of the planning unit's uses. The application land used for agriculture/uncultivated.

3/10/0136/CLU and 3/10/0137/CLU – similar evidence to 0135

3/10/0917/CLU – a claim of 10 caravans stored in the second lawful paddock. Application refused. A good stock of aerial photographs show the changeable ground surfaces none of which indicate a caravanning or camping use relevant to the application land.

Aerial photographs submitted with applications have generally been taken during the caravanning and camping season therefore storage within the two lawful paddocks has not been substantiated.

3/11/0393/CLU – a signed plan (J White, previous owner) indicating the arrangement of the farmhouse's residential curtilage with part of this application land labelled "agricultural fields".

3.3 Enforcement History

ENF/09/00295 approached the use of the land in and around the farmhouse, residential use of static caravans. There is also a reference to this application land being used for a rally **for the first time in 2009** (see Appendix 3). This file seems to persuade the submission of the 2010 series of LDC applications. It includes the PCN return dated 19 November 2009 with reference only to the southern part of this application land.

ENF/11/00052 contains no information of relevance.

ENF/17/0094 is a current investigation of this application land and the siting of alleged 200 electric hook-up posts, four toilet blocks, and the use of the land for an unlicensed caravan and camping site. Relevant screengrabs of evidence of the use are appended, Appendix 3. A number of site visits have occurred. Investigations are ongoing awaiting determination of this application.

3.4 Site Licencing

A site licence for the lawful paddocks was issued to the applicant on 21 September 2017 for a total number of 54 touring caravans/tents/motorhomes without distinction. The paddocks may only be used between Easter and 30 September each year.

When LDCs were issued the land owner at that time appears not to have contacted the relevant licencing department. The relevant planning files neither confirm nor deny if the LDC decisions were communicated to site licensing.

3.5 Business Rates

No comment sought.

3.6 Association to Exempted Organisations

Within 3/96/0663 a letter from the Camping and Caravanning Club indicates there was the land was no longer registered as a certified site from 16 July 1996. This is further endorsed in 3/96/0024 from a letter dated 9 December 1996. The evidence suggests that non-members used the lawful paddocks, rather than the application land.

A letter contained with enforcement casefile of 2009 dated 15 December 2009 indicates that the Camping and Caravanning Club was no longer associated to the site in any capacity, although the Council letter addressing all planning matters at the time indicated that 29 day rallies were permitted and therefore no further action was necessary.

The current enforcement file contains communication with the CCC. The relevant evidence from this exercise is placed in Appendix 5. The CCC state that events must be within the following parameters –

A Meet can last from 1 to 5 nights and is organised by one of our Club Units such as District Associations, Regions and/or Special Interest Sections. A Temporary Holiday Site lasts from 6 to 28 nights and works much in the same way as a Meet does. The main difference, apart from the duration, is that facilities such as a chemical disposal point needs to be provided and non-members can attend when staying in a Member's unit as a guest. Both types of event will have stewards on site for the duration to ensure that Club rules are enforced and that members expectations are maintained for the duration of the event.

Five Day Meets

Two days must elapse between the end of a Meet and the start of another Meet on the same site. No Club unit should camp on the same site for two successive Meets, unless a minimum period of seven days passes between each Meet.

Temporary Holiday Sites

Seven days must elapse between the end of a THS and the start of another THS on the same site. No Club unit should hold two successive THSs on the same site, unless a minimum period of 28 days passes between each THS.

If a Meet and THS are being held in close succession, all Club units must allow seven days to elapse between each event. The above time intervals are to ensure ground recovery and that the site is not over used.

3.7 Consultations

As a result of naming the “Caravan and Camping Club” in the Stat Dec of Mr Pitt, the organisation “Camping and Caravanning Club” as it is known was asked to comment on any recorded use of the application land from 2006 to the present day. The Caravan and Motorhome Club was also contacted.

Camping and Caravanning Club

Previous communications with the Council were repeated. A spreadsheet of events held by CCC members on record is received and found at Appendix 4. The CCC would like notification of the outcome of this application for

reference to proposed use of the site in 2018 (2 events).

Caravan and Motorhome Club

No reply received.

West Hampshire CMC Centre (Rally Secretary)

No reply received.

3.8 **Aerial Photographs**

The Council has three aerial photographs as follows, see **Appendix 8**

2006 taken on 04/06/2006

2010 taken on 23/04/2010

2014 taken on 22/07/2014

The evidence arising from these images indicates, during the open caravanning and camping season on that particular moment in time, there was no evidence of a caravanning or camping use. In 2010 there were sheep on the application site (in the northern part), 21 caravans kept in the lawful storage area, and caravan pitched only in lawful paddock 2. There may be some unauthorised storage taking place in paddock 2 also. 2014 shows haylage taken in part of this area with a few caravans along the boundary and within the application land. There is some unauthorised storage occurring in the lower part of the application site.

The use of the application land appears an activity of more recent years.

3.9 **Neighbour Observations**

None sought.

3.10 **Internet evidence**

Gundrys Farm features on [Trip Advisor](#). A link and screengrab is placed at **Appendix 6** of this report. Comments on the site begin in 2013. Each comment has been read and considered as evidence.

The aerial image indicates that a small part of this application land was put to use for caravanning in August 2015, the details of the users is unknown and undeclared.

There are no comments which suggest the application field was in use in 2013, 2014 or in 2015 prior to the image of August 2015, and **no reference to the application land** was found until 4 June 2016 where a tent and event shelter were permitted to pitch in the field.

Overall visitors refer quite openly to using the siting caravans around the

paddock edges, play space in the centre of the same for children, facilities relate to the lawful paddocks. Plenty of mixed opinion of the site. A visitor on 25 July 2015 stated there were only two paddocks available.

Application land Visit 2 October 2017.

- 3.11 Sketch drawings from the site visit are appended. See **Appendix 7**
- 3.12 The application land was observed and details arising are as follows –

Current Use / Field Names

The application land (edged red) consists of two paddocks, named Sunset and Sundown. Sundown is the larger of the two paddocks. Both paddocks were found to be in use with some occupation. Sundown consisted of storage of touring caravans for and on behalf of “seasonal” users of the application land.

The two lawful paddocks are called Primrose (Paddock 1) and Bluebell (Paddock 2).

Boundaries

There are physical boundaries on all four sides of the application land. The eastern boundary of the application land is subject to access to the other caravanning and camping parts as well as the administrative area in close proximity to the farmhouse.

Access

There are three points of access to the application land – the main (driveable) access to the application land is via a narrow pathway from the main entrance. A gated access permits cross-over to the other paddocks and to the farmhouse administrative area. There is a further gated access to the lawful paddock known as “BlueBell” (Paddock 2). There is signage which denotes no right of access at this point (due to part of the application land being used for storage).

Capacity / Layout

There are electric hook-ups to provide 36 pitches on Sunset, and 37 pitches on Sundown. The difference of 27 (totalling 100) appears to refer to the caravan storage taking place within Sundown, however the number of caravans within that “cordon” appeared to exceed 27 (more like 40 on site).

Hook-ups

Equipment consists of two types of hook-up (*equivalent to Rolec TRE units, and modern Quantum pedestal bollard-style units*).

11 units were observed in Sunset. There were over 36 units observed in Sundown.

Water and services

There is in-field source of water, access to grey water disposal, and fire points on the application land

Amenity

There are two blocks providing WCs and Showers within Sundown. Customers appear also to have access from the application land to toilets and showers located elsewhere within the planning unit – five (5) showers formed within an extension to the farmhouse; a standalone WC block within the farmhouse complex, a WC block within the lawful Bluebell Paddock.

Play Area

No equipment observed. No defined area observed.
There is a seating area near the Pond.

3.13 Observations of area outside of the application land

Paddock 1 – Primrose

There are currently 8 caravans on the land. These are being stored on the land for their owners who pay for such services but are not permitted to occupy them between October and Easter. Such a use of the land is not lawful.

Paddock 2 – Blue Bell

There are currently 33 caravans on the land, being stored as above. 2 caravans appeared to be occupied. Such a use of the land is not lawful.

Rally Field

This is located within the area edged blue (part of) on the application land location plan. There were no caravans on site. Electric hook-ups (capacity not known) stand on the land, together with WC and showers buildings.

Sheep Grazing

This takes place outside of the application site within the area edged blue but not shown on the application location plan.

4.0 **ANALYSIS**

4.1 **Legislation and Lawful Use**

The use of land for caravanning and camping is defined in law as follows –

1936 Public Health Act
1960 The Caravan and Control of Development Act
1968 The Caravan Sites Act
1990 The Town and Country Planning Act
2015 General Permitted Development Order

The Council will contend that the above relate, and in the context of the application, to a use for holiday and recreational purposes.

Exempted organisations (see Appendix 4)

The relevant sections are parts 3, 4, 5, 6 and 12 of the 1960 Act.

Part 6 is most likely to be applied to the use of the application land for rallies - A site licence is not required for the use of land as a caravan site if the use is under the supervision of an exempted organisation and is in pursuance to arrangements made by that organisation for a meeting for its members lasting not more than five days.

Noting that there are periods of 28 and 16 night stays. These are relevant to paragraph 3 and 4.

GPDO Part 4 use

By s191 (2) the lawfulness of the application must be determined on the premise and by evidence of use contrary to the Act 1960 and/or Part 4 of the GPDO 2015, thus activities requiring planning permission. The use of the land by exempted organisations would not be contrary to the Act unless such use exceeds what is statutory permitted. In this case no evidence is presented.

By s192 a use of the land by exempted organisations would be a lawful use subject to the limitations statutory imposed by Order or Regulation.

This report can only therefore consider evidence of an unauthorised use of the land rather than evidence in combination with a permitted use.

- 4.2 Recorded incidents of rallies since 2009 by exempted organisations (precise location is not readily available for all events on record) do not assist the applicant to obtain a certificate. Such incidents appear to comply with regulations, should therefore be discarded and furthermore do not amount to a 10 year period.

There is no evidence of a continuous use in breach of the regulations for at least 10 years.

4.3 **The Planning Unit**

The planning unit consists of a range of paddocks around a central farmhouse complex with single access to it via a quiet lane from a main road.

A plan is set out at Appendix 7.

The concentration of caravanning and camping activity has been from the east of farmhouse, beginning at the main entrance, creeping south-westerly into paddock 2, which is very much screened from any public vantage point and thus there has been unsubstantiated claims of storage. The application land appears to come into play in recent years as a spill out from the two lawful paddocks as a rally field only. There is sufficient documented evidence to contend that all western paddocks have been retained for agricultural purposes (sheep grazing, haylage).

Weight of Application evidence

- 4.3 There is insufficient submitted evidence on this occasion and by s191 (4) the Council cannot be satisfied that the claim by s191 is made out.

The statement purports to include unsubstantiated and unrecorded/unseen siting of caravans as evidence of a use. The application asks the Council to consider the use of the application land on the premise of “it is quite possible” and “it is more likely” rather than for instance produce *hard evidence* of bookings of caravans, up to 100 in number, for a period of at least 10 years.

In respect of the rallies claimed, there is no evidence of bookings provided or details of income and expenditure amounting from such activity from the applicant.

Notably there are no references to previous planning decision submissions by Mr Pitt to verify current claims.

- 4.4 There are no overwhelming statements of support from adjacent landowners of use of the application land for what is claimed.

Weight of Council Evidence

- 4.5 In stark contrast to the 2017 Stat Dec of Mr Pitt – Appendix 2 presents the planning history in context to the application land. An opportunity to describe in 2009 and 2010 sincerely any use of the application land for caravans and camping is now lost.

The historical planning and enforcement records and the evidence relied upon to obtain Lawful Development Certificates do not accord with Mr Pitt’s current position.

- 4.6 An aerial image within the 3/10/0135 decision shows sheep grazing in the field or otherwise the application land appears as uncultivated. The affidavits

of Mr & Mrs Pitt focus solely on three areas – two lawful paddocks and a storage area – the extent of their enterprise. Letters recall rallies held in the lawful paddocks, although by the extent of duplication and samey phrasing, the evidence suggests that rallies were accommodated with the lawful paddocks in the first instance.

The PCN returned by Mr Pitt in October 2009 indicates an agricultural use of the southern part of the application land, no reference to the northern part and thus it is presumed unused and insignificant at the time. The caravan and camping use have been throughout time concentrated to the lawful paddocks.

By the date of this application alone, a period of at least 10 years for a use of the application land cannot be made out.

- 4.7 By the applicant's own attempts to persuade this report that ground surfaces are not dissimilar to the lawful paddocks (and that it falls that they could thus be used for what is claimed), by the aerial imaging submitted for the 2010 LDC series (0135/0136/0137), there is a clear suggestion in the Envirosearch image and 2005/6 aerial photo of ploughing or cultivation; of water troughs freestanding in the field in 2004; of the application land being flexibly enclosed to meet the agricultural need.

The aerial photographs at the Council's disposal do not indicate a caravanning and camping use of the application land before 2014.

The images do not assist the application's claims.

- 4.8 Any off season storage use of the land appears to be contained solely in respect of planning decision 3/10/0135, whereas 3/10/0917 refused winter storage within the lawful paddock 2. Customers submissions were ignored (many duplicating samey phrasing without substantiating their claims)

The claims are unsupported.

- 4.9 The plan signed by J White labelling part of this application land as "agricultural field" must be taken as a sincere indication of the use of the land on 8 April 2011. The affidavit provided by Mr Pitt (and signed by him) further endorses this submission.

The immunity claim is broken by submissions in 2011.

- 4.10 The obvious lack of application land (larger field) related experiences prior to the 4 June 2016 which appear on the Trip Advisor webpages lends to a view that only rallies prevailed within the application land.

The visitor comments consistently refer to the single toilet block on paddock 2, the siting of caravans etc around the paddock boundaries, applicable to both paddocks, the space created centrally to allow children to play. Bank Holiday comment appear to lean towards capacity which exceeds the lawful limit of 54 and that results in "shoehorning", some overcrowding and very little

reference to the application land – the larger field. It would be expected that visitors would refer to the openness and expanse and the distance from the loos.

There is insufficient evidence to allege that the application land has been applied to visitors regularly and at best only on busy bank holiday weekends, which would amount to unauthorised caravanning and camping for at least 10 years.

4.11 There would appear scope for enforcement action within the planning unit for the following –

- Use of the application land and the newly created “rally field” for caravanning and camping;
- Installation of electric hook-ups and other services; **
- Installation of WC and shower blocks within the application land, the “rally field”, the standalone WC block newly formed north of the farmhouse; **
- Use of the application land to store caravans
- Use of the lawful paddocks to store caravans

** Consultation with Site Licensing should take place to see whether such installations can be supported.

It is suggested that where an application to regularise these matters is not forthcoming, enforcement action is proportionate.

The land stands in Green Belt and in close proximity to SPA, SAC and SSSI. There are obvious planning considerations whether recreational use of the remaining paddocks at Gundrys Farm can be supported.

Proportionate consideration of the NPPF, the CED Core Strategy and the Dorset Heathlands Planning Framework must take place as well as considerations of amenity and impacts. The site is close to recreational and tourism attractions. Policy TODEV2 (Criteria for the location of new and extended holiday caravan and tent sites) is a saved policy from the EDDC local plan. See Appendix 9

This report however will not appraise the full planning merits or presume that support will be granted planning permission.

5.0 CONCLUSIONS

5.1 The application land has no planning history. It is currently being investigated as an unauthorised use of land.

5.2 Typically and on the balance of probability the application land has been **primarily** used for agricultural activities up and inclusive of the planning decisions which account for the use of the land before 14 April 2011 (date of issue of 3/11/0393).

On that basis, by s171B, a period of at least 10 years cannot be made out.

- 5.3 The submitted evidence for this application is not credible by comparison to historical documents.

It would appear that the historical claims of land use and immunity prior to April 2011 were made on a piecemeal basis, and somewhat manipulated, by submission of evidence that sought to emphasise only a particular use and a particular location. It is very significant that evidence is provided as sworn and sincere submission each time. No weight should therefore be afforded to what is claimed by this application in 2017. The historical evidence exposes Mr Pitt in 2017 as being short of his own facts.

- 5.4 Holistically therefore the immunity cannot be made out by the obvious absence of a caravanning or camping use of the land by reference to this application land throughout the planning decisions available and displayed in Appendix 2.
- 5.5 The attempt to have the Council grant a certificate on the premise of examining ground surfaces falls short of proper evidence for the purposes of s191.
- 5.6 Any incident of rally by an exempt organisation should not be accounted within the test of 10 years. Such activities may take place provided they are compliant to statute and regulation. There is no evidence (presented or available) of rallies which breach the same and of customer use of the application field until recent times.
- 5.7 There is scope for enforcement action for what is currently occurring across the whole of Gundrys Farm under the control of the current landowners. The Council is of the opinion that the use of the application land for caravanning and camping amounts to an unauthorised use of land and would be liable to enforcement action.

6.0 **RECOMMENDATION**

- 6.1 That the application is **REFUSED** for the following reasons -
- 6.2 The Applicant has failed to provide the Council with sufficient evidence to establish that the land described in the Second Schedule and as edged red has been used continuously for the purposes subject of the development as described in the First Schedule for the past 10 years.

First Schedule

Siting of up to 100 caravans from Easter to the end of October

Second Schedule

Gundrys Farm, School Lane, Three Legged Cross, Wimborne, Dorset, BH21 6RU (as edged red).

7.0 **INFORMATIVES**

7.1 The use of land by exempt organisations may occur on the application land subject to compliance with statutory Regulations and or Order.

7.2 It would be appropriate to apply for planning permission to regularise all current unauthorised use of Gundrys Farm.

7.3 **Procedural (Post Determination)**

There is a right of appeal against a refusal to grant a LDC.

S195

Appeals against refusal or failure to give decision on application.

(1) Where an application is made to a local planning authority for a certificate under section 191 or 192 and—

(a) the application is refused or is refused in part, or

(b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority,

the applicant may by notice appeal to the Secretary of State.

(1B) A notice of appeal under this section must be—

(a) served within such time and in such manner as may be prescribed by a development order;

(b) accompanied by such information as may be prescribed by such an order.

(1C) The time prescribed for the service of a notice of appeal under this section must not be less than—

(a) 28 days from the date of notification of the decision on the application; or

(b) in the case of an appeal under subsection (1)(b), 28 days from—

(i) the end of the period prescribed as mentioned in subsection (1)(b), or

(ii) as the case may be, the extended period mentioned in subsection (1)(b).

(1D) The power to make a development order under subsection (1B) is exercisable by—

(a) the Secretary of State, in relation to England;

(b) the Welsh Ministers, in relation to Wales.

(2) On any such appeal, if and so far as the Secretary of State is satisfied—

(a) in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, or

(b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded,

he shall grant the appellant a certificate under section 191 or, as the case may be, 192 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application.

(3) If and so far as the Secretary of State is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he shall dismiss the appeal.

(4) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question.

(5) For the purposes of the application of section 288(10)(b) in relation to an appeal in a case within subsection (1)(b) it shall be assumed that the authority decided to refuse the application in question.

(6) Schedule 6 applies to appeals under this section.

Date:	30 November 2017	Date:	7 November 2017
Case Officer Signature:	DLL	Authorising Officer Signature:	PW

