



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 19 August 2021

Appeal Ref: APP/D1265/X/21/3267508

Rivendell, Horton Road, Horton Heath, Wimborne BH21 7JN

- 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 L Burchell (Rivendell Outdoor Club Ltd) against the decision of Dorset Council.
 - The application Ref: 3/20/0350/CLP, dated 24 February 2020, was refused by notice dated 30 July 2020.
 - 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: A sui generis mixed use of land comprising an Outdoor Member Club leisure and recreational facility as granted by 3/96/0388/FUL and on appeal by 3/99/0853/FUL on 07/03/2000 and continuing in use subject to the said permissions, but comprising more than 5 caravans (contrary to condition 5 and not used as a sole or main residence for the avoidance of doubt); and used throughout the year (contrary to condition 4 of the 3/99/0853/FUL decision); together with clubhouse and residential annexe, ancillary use of the land for camping within a range of tented accommodation units, and together with ancillary activity and storage facilities, services, and parking spaces as shown on the revised application block plan received 25/07/2019.
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Decision

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

Background

2. In 1996 planning permission ref: 3/96/0388 was granted for '*Change of use of land to form a mixed use for residential use and outdoor club and construction of sauna/toilet block at Rivendell, Horton Road, Horton Heath*'. The planning permission was subject to various conditions. Relevant to this appeal is condition 3 that states, "*The use of the site hereby approved shall be as an Outdoor Club for members only and for no other purpose whatsoever*". As a matter of fact, there is no condition or legal obligation that means the outdoor club must be a naturist facility.
3. In 2000, planning permission (LPA ref: 3/99/0853) was granted on appeal (Ref: T/APP/U1240/A/99/1031929/P6) for "*The use of land for the stationing of five caravans for members of the Rivendell Outdoor Club*". In his reasoning, the Inspector found that there were very special circumstances that merited

the granting of planning permission for the caravans in the Green Belt, based on the benefits that occupation of the caravans would bring to a minority section of the community, those being naturists who wanted to pursue a distinctive lifestyle. As such, he imposed condition 3 on the planning permission which states, *"The use hereby permitted shall be carried on only by members of the Rivendell Outdoor Club or any successor club occupying and using the site as a naturist facility, and shall be for a limited period being the period during which the site is occupied by a club affiliated to the Central Council for British Naturism; when the site ceases to be occupied by such a club the use hereby permitted shall cease and all caravans brought on to the site in connection with the use shall be removed"*.

4. In 2019 an application for a Lawful Development Certificate (LDC) (ref. 3/19/0775/CLE) for a 'mixed use as a dwelling, outdoor club and camping and caravan site' was submitted to the Council. On 23 October 2019 the Council granted a LDC for *"A sui generis mixed use of land comprising a naturist leisure and recreational facility as granted by application 3/96/0388/FUL and on appeal to the Planning Inspectorate in relation to application 3/99/0853/FUL (Appeal reference APP/U1240A991031929P6) on 07/03/2000 and continuing in use subject to the said permissions, but comprising more than 5 caravans (contrary to condition 5 and not used as a sole or main residence for the avoidance of doubt); and used throughout the year (contrary to condition 4 of the 3/99/0853/FUL decision); together with clubhouse and residential annexe, ancillary use of the land for camping within a range of tented accommodation units, and together with ancillary activity and storage facilities, services, and parking spaces as shown on the revised application block plan received 25/07/2019"*.
5. In short, the appellant takes issue with the reference to the site being a "naturist" facility as this does not reflect how the site has been operated, and continues to operate, which is on a clothes optional basis. This LDC application boils down to replacing the words "a naturist" with "an Outdoor Member Club".

Main Issue

6. The main issue is therefore whether the Council's decision was well founded to refuse the LDC application.

Reasons

7. The Council raises the concern that the term "Outdoor Members Club recreation and leisure facility" lacks precision and could be open to interpretation. However, the 1996 planning permission was granted for a mixed use that included an *"outdoor club"* as referred to in the 2019 LDC. Furthermore, condition 3 of the 1996 permission restricted the use of the site *"as an Outdoor Club for **members** only"* (my emphasis). Moreover, the LDC established that the use comprised a *"leisure and recreation facility"*. Therefore, the use of the land as an outdoor members club recreation and leisure facility has already been found lawful.
8. Turning to the replacement of the word 'naturist', it is important not to lose sight of the description of development I am being asked to certify as lawful. The 2000 planning permission was for *"The use of land for the stationing of five caravans for members of the Rivendell Outdoor Club"*. The planning permission was not for a naturist facility. It is only condition 3 that requires the use to be

by members of the Rivendell Club (or any successor club) as a naturist facility. Given that the LDC already granted confirms the land "*continuing in use subject to the said permissions*", with each permission specifically referenced earlier in the LDC description, but contrary only to conditions 4 and 5 of the 2000 planning permission, deleting 'naturist' and using the replacement wording would not certify a breach of condition 3. Although the appellant has stated that they intend to have naturist customers and remain affiliated to British Naturism, if in the future there were concerns that condition 3 was being breached, it would still be open to the Council to take enforcement action to seek compliance with the condition. Moreover, given what I have already said about what was granted by the 1996 permission, using the words as proposed by the appellant would merely tie in with that permission. In this context, it was not correct for the Council to introduce the word 'naturist'.

9. Such a modified LDC would not contravene any planning permission granted, or conflict with what the permitted LDC has established is already lawful. As such, the use proposed would be lawful. Given this, I do not need to turn my attention to the evidence about whether the deletion of 'naturist' and its replacement with 'Outdoor Member Club' would involve a material change of use of the land.

Conclusion

10. 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 that set out in the banner heading above, 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.

Gareth Symons

INSPECTOR

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 dated 24 February 2020 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 use would not contravene any planning permissions or the Lawful Development Certificate already granted for the site under s191(1)(a) of the Town and Country Planning 1990 Act as amended.

Signed

Gareth Symons

Inspector

Date 19 August 2021

Reference: APP/D1265/X/21/3267508

First Schedule

A sui generis mixed use of land comprising an Outdoor Member Club leisure and recreational facility as granted by 3/96/0388/FUL and on appeal by 3/99/0853/FUL on 07/03/2000 and continuing in use subject to the said permissions, but comprising more than 5 caravans (contrary to condition 5 and not used as a sole or main residence for the avoidance of doubt); and used throughout the year (contrary to condition 4 of the 3/99/0853/FUL decision); together with clubhouse and residential annexe, ancillary use of the land for camping within a range of tented accommodation units, and together with ancillary activity and storage facilities, services, and parking spaces as shown on the revised application block plan received 25/07/2019.

Second Schedule

Land at Rivendell, Horton Road, Horton Heath, Wimborne BH21 7JN

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: 19 August 2021

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Reference: APP/D1265/X/21/3267508

Scale: Do not scale.

