



Appeal Decision

Hearing held on 7 December 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Appeal Ref: APP/D1265/X/21/3267159

Meadow View Caravan Park, Wigbeth, Horton, Wimborne BH21 7JH

- 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 Wessleigh Limited against the decision of Dorset Council.
- The application Ref 3/20/2118/CLP, dated 18 November 2020, was refused by notice dated 12 January 2021.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The certificate of lawful use or development is sought to confirm that the site has planning permission (by virtue of permission ref. 3/01/1356, granted in April 2002) for a 'mixed use of land as a caravan site and commercial equestrian enterprise' and that both named uses can take place across the entirety of the land outlined in red on Drawing No. 1644-0001-01.

Decision

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

Application for costs

2. At the Hearing an application for costs was made by Wessleigh Limited against Dorset Council. This application is the subject of a separate Decision.

Procedural matters

Site visit

3. Due to the nature of this Decision, which concerns the interpretation of a 2002 planning permission (Ref. 3/01/1356, 'the planning permission'), I did not consider it necessary to carry out a site inspection. My intention not to do so was discussed at the hearing, and neither of the main parties raised objections in response or requested a site visit.

Site plan

4. At the hearing, the main parties provided me with a statement of common ground. It was agreed (at point 3) that the appeal site was, as a matter of fact, shown edged in red on a replacement site plan¹ which was passed up. The parties agreed that the replacement plan was for the purpose of the appeal materially the same as the relevant plans accompanying the LDC and planning permission applications but with a small part of the land excluded where a barn

¹ 19_1026B_001

had been converted post-2002 to a single dwelling under permitted development rights². Accordingly, the LDC is based upon the land demarcated within the replacement plan.

Third party notification

5. Under the Hearings Procedure Rules³, the Secretary of State may in writing require the local planning authority to send a notice of the hearing to such persons or classes of persons as he may specify, within such period as he may specify. Every such notice shall contain a clear statement of the date, time and place of the hearing.

6. On 14 July 2021, my case officer wrote to the Council and required it to do the following:

"No later than 2 weeks before the opening of the hearing you must serve a notice of the hearing arrangements on those persons other than the appellant(s) with an interest in the land, those who made representations at the application and/or appeal stages, those entitled to appear at the hearing and anyone else you consider to be affected by or interested in the proposed development."

7. Notwithstanding this requirement, and with the exception of its own environmental health department, it was established at the hearing that the Council had not notified other persons in writing as requested. The Council said it considered that no-one else was affected by the application, and further that no notification of the appeal was necessary as it had not notified third parties of the application and no submissions had been received. Significantly, however, the Council had not notified persons with an interest in the land other than the appellant – who under the Hearings Procedure Rules⁴ were entitled to appear at the hearing.
8. It was also established at the hearing that there are parcels of land within the appeal site where there are persons, or could be persons, other than the appellant with an interest. The first was an area of unregistered land in one corner of the site. The second was a field to the north-east of 'Wigbeth House' which the appellant told the hearing had been sold to the owner of 'The Chase'. The third was the field-land associated with the building that had been converted from a barn to a dwelling, known as Hilltop Barn, that was included within the appeal site notwithstanding the dwelling and its curtilage being excluded from it.
9. Having invited the views of the main parties, I ruled that the hearing could proceed without any significant risk of prejudice to the interests of an interested party notwithstanding that they did not know about the appeal and/or were not notified of the hearing. The basis of this ruling was as follows:
 - The hearing was told that the appellant believed he owned the unregistered land. Further, there was no information before the hearing to suggest that there was anyone else with an interest in the land and no identification of any such person which would have enabled them to have been notified;

² Prior Approval application dated 8 December 2014

³ The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002; Rule 6

⁴ The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002; Rule 9

- Ms Adams of the Council told the hearing that she had spoken with the owner of 'The Chase' on 6 December 2021, who had confirmed he was aware of the hearing and did not want to attend or make representations upon the appeal;
- I have been provided with a copy of the HM Land Registry extract detailing the separate ownership of Hilltop Barn and associated field-land. The Council's interpretation of the planning permission, were it to have been correct, would not have lawfully permitted the siting of caravans on that title's land within the appeal site. The appellant told the hearing, however, that there was not in any respect any proposal to site caravans upon the Hilltop Barn land, as shown in the caravan site licence applications that had been made pursuant to the appellant's interpretation of the planning permission. Accordingly, the owner of the land would not have been disadvantaged either way the appeal was to be decided through a loss of opportunity to make representations as it did not appear that there was any intention to use that land as a caravan site. I also place significant weight on the Council's clear answer at the hearing that no third parties are affected by the application.

Main Issue

10. The main issue in this appeal is whether or not the Council's decision to refuse the application for the LDC was well-founded.

Reasons

11. The Council acknowledged in its formal reasons for refusing the LDC that "Planning Permission Ref. 3/01/1356 grants planning permission for a mixed use consisting of a caravan site use and a commercial equestrian enterprise use". I agree. While the operative grant of permission was ambiguous, referring to "Change of Use to Mixed Use as Caravan Site **for** Commercial Equestrian Enterprise" (my emphasis), that description was apparently self-contradictory in implying a single use and the Council correctly interpreted the permission in this respect by using the application form to satisfactorily resolve this particular ambiguity of narrow focus in line with case law⁵.
12. The single point of dispute between the main parties is that the Council's reasons for refusal of the LDC also said that the permission "does not permit both elements of this mixed use to take place across the whole of the site edged red at Meadow View, Wigbeth, Horton, Dorset BH21 7JH...The caravan use that is granted permission under Planning Permission Ref.3/01/1356 is confined to the land edged green on the approved plan that is attached to this notice". The appellant argues that the permission did not impose such a restriction.
13. It is toward the appellant's case that there is no condition attached to the planning permission restricting the caravan site use, as part of the mixed use, to any part of the application site demarcated by the red line of the plan that formed part of the application (received 11 February 2002). That plan (the 2002 plan), which is incorporated into the permission, is said however to be ambiguous by the Council because it has the words "Caravan and Camping Site" annotated at one place within the red-lined application site.

⁵ Including R v Ashford Borough Council v Shepway District Council [1999] PLCR 12

14. The subsequent rationale for the Council interpreting the permission as limiting caravan site use to a much smaller area, shown by a green line within a plan it attached to the LDC refusal notice, involved a significant use of extrinsic material and is said to be based on the previous extent of caravan use of the land based on what had earlier been granted by way of a 1987 permission (3/86/1225) and a 1997 caravan site licence.
15. However, I find the 2002 plan to be clear and unambiguous. The extent of the application for the mixed use was clearly marked by the red line⁶. The fact that the plan was annotated by words from an Ordnance Survey (OS) base map does not change that clear demarcation. Even had the annotated words in question related to a smaller area within the appeal site that may have historically been the focus of caravan site use, information contained on a drawing showing *existing* features (as I consider the OS information serves to provide) does not limit the proposed development for which permission was sought and granted. "Camping" was in any respect clearly not part of the approved proposal, further reinforcing the irrelevance of the OS annotation as to what was being proposed. These features in this appeal make it materially different to the *Cartledge* case⁷ raised by the Council where the court found that "mixed trees and undergrowth" marked on a plan "set out a detailed *proposal* for which permission was sought" (my emphasis, paragraph 20).
16. After the narrow and focussed resolution of the ambiguity in the operational grant of permission (and not *for*), and reading the permission as a whole together with its conditions and the plan, the approval was clearly and unambiguously for a mixed use across the whole of the application site within the red line and no reasonable reader taking a common-sense approach⁸ could interpret it as imposing a geographical restriction on one of the uses within the mixed use. Further to this, the distinct physical separation of the caravan site represented by the argued (yet unconditioned) restriction is at odds with the basic concept of a mixed use of a planning unit, as approved. As such, it was not necessary or lawful⁹ for the Council to interpret the permission by recourse to the extrinsic material it has considered in coming to its green line restriction.
17. On a separate point, the Council in its statement appears concerned that the appeal site would not be used for more than a *de minimis* commercial equine use. Were that the case, the Council has enforcement powers to address use of the site outside of the genuine mixed use permitted by 3/01/1356.

Conclusion

18. 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 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.

Andrew Walker

INSPECTOR

⁶ Which identified the land to which the application related pursuant to Regulation 3(1)(b) of the Town and Country Planning (Applications) Regulations 1988

⁷ *Cartledge v Scottish Ministers* [2011] CSIH 23

⁸ In line with case law, inc *Trump International Golf Club Scotland Limited v Scottish Ministers* [2016] 1 WLR 85

⁹ In line with case law, inc *Slough Borough Council v Secretary of State for the Environment* [1995] JPL 1128, and *Miller-Mead v Minister of Housing and Local Government* (1963) 2 QB 196.

APPEARANCES

FOR THE APPELLANT:

Paul G Tucker QC
Michael Rudd
Matthew Green
Matthew James
James Beshoff
Marco Lucas Barney

FOR THE LOCAL PLANNING AUTHORITY:

Elizabeth Adams
Philip Crowther
Lara Aintree

INTERESTED PERSONS: None

DOCUMENTS

- 1 Statement of Common Ground
- 2 Site Plan (19_1026B_001)
- 3 Prior Approval application dated 8 December 2014 – Meadowview – Conversion of barn to a single Dwelling
- 4 HM Land Registry extract - Title Number DT420044 (Hilltop Barn, Wigbeth, Horton, Wimborne (BH21 7JH))

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 18 November 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 land has planning permission (3/01/1356) for a mixed use as a caravan site and commercial equestrian enterprise and that permission does not restrict either named use to any part of the land. Under that approval both named uses can lawfully take place across the entirety of the land edged in red in the plan attached to this Certificate, as long as there is a genuine mixed use of the land as a whole.

Signed

Andrew Walker
Inspector

Date: 13 January 2022

Reference: APP/D1265/X/21/3267159

First Schedule

Mixed use of land as a caravan site and commercial equestrian enterprise, and that both named uses can take place across the entirety of the land.

Second Schedule

Land at Meadow View Caravan Park, Wigbeth, Horton, Wimborne BH21 7JH

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: 13 January 2022

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

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Scale: Do not scale

