



Appeal Decision

Site visit made on 13 May 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/07/26

Appeal Ref: APP/W1145/X/25/3375548

Land at The Big Sheep, Road From St Helens Primary School To Abbotsham Road, Abbotsham, Devon EX39 5AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Turner of The Big Sheep against the decision of Torridge District Council.
 - The application ref 1/0204/2024/CPE, dated 4 March 2024, was refused by notice dated 14 May 2024.
 - The application was made under section 191(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 mixed use as an adventure park, caravan and camping site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site visit was planned as an accompanied visit, where a representative of both parties would be present. Although notification of this was sent to both parties, the Council says that this was not received. I spoke to a Council officer at the start of the visit. They confirmed that they were in agreement that the visit could be conducted as an access only visit. This was later confirmed in writing.
3. Due to the nature and extent of the site, it was necessary for me to be accompanied by the appellant during the site visit. I did not, however, discuss the merits or any aspect of the case with the appellant during the visit.

Description of the matter for which the LDC is sought

4. The appeal was initially to be determined by way of a public inquiry. As such, a case management conference (CMC) was held in which I highlighted the advice in paragraph 010 of the Planning Practice Guidance on Lawful development certificates (PPG), which advises that 'precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it'. It goes on to say that 'it is important to note that a certificate for existing use must include a description of the use, operations or other matter for which it is granted', and that 'in all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision'.

5. To my mind, the description of the mixed use stated in the LDC application form, and repeated in the Council's decision notice and the appeal form, comprises two elements. The first, an adventure park, and the second, camping and caravanning.
6. At the CMC I asked the parties to provide a more detailed description of the use for which the LDC is sought, setting out the characteristics of the use, including the number of pitches comprising the caravan and camping element of the mixed use.
7. With regard to the characteristics of the adventure park element of the mixed use, a statement of common ground (SOCG) has been agreed which says that 'The Big Sheep attraction includes a range of indoor and outdoor rides and attractions, play areas, brewery, distillery, café, event spaces, war games area, and ancillary facilities including offices, storage, workshop and car parking'. The evidence submitted with this appeal demonstrates that 'The Big Sheep' attraction is a popular visitor attraction that includes facilities for people of all ages to come to play, enjoy rides, watch displays and entertainment, and enjoy outdoor adventure play, as well as shop, and eat and drink within the café and restaurant on the site. Whilst I am broadly satisfied with the suggested characteristics of the 'adventure park' element of the mixed use for which the LDC is sought, there may be some activities listed that might be ancillary, rather than part and parcel of the use.
8. Turning to the characteristics of the caravan and camping element of the mixed use, I have no reason to regard caravanning and camping as two separate elements of the mixed use claimed. Neither do I doubt that this activity comprises what one would expect on a camping and caravan site, including open fields for pitching tents, together with individual tent or caravan pitches, as well as the usual washing and w.c. facilities. There is no suggestion that the caravan and camping element of the mixed use claimed is for permanent residential occupation; the evidence indicates that it is for holiday and tourism purposes.
9. Notwithstanding this, there is limited evidence regarding the extent and intensity of this element of the mixed use. While there is reference to this element of the mixed use taking place on certain parts of the appeal site, the duration and number of pitches have not been specified.
10. Appendix D of the SOCG sets out what the parties have agreed as a revised description of the use for which an LDC could be granted. This includes reference to what would be permitted by Class BC (temporary recreational campsites) of Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order). Whilst I will come to this later in my decision, it provides little assistance in characterising the caravan and camping element of the mixed use that the appellant says has occurred. There remains, therefore, a degree of ambiguity with regard to the extent and intensity of this element of the mixed use.
11. Notwithstanding the above, there is reference in evidence to mobile homes and static caravans used for staff accommodation on the appeal site. As described, this appears separate to both the adventure park and the camping and caravanning referred to above, but it is not suggested as an element of the mixed use of the site for which the LDC is sought. Furthermore, in the proof of evidence submissions the appellant suggests that there is a third element to the use of the

appeal site, which they describe as the holding of events, festivals and rallies. This is also not included as an element of the mixed use set out in the description in the LDC application form, which is also repeated in the Council's decision notice. I will, nevertheless, consider both activities in my determination of the appeal.

Main issue and main considerations

12. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that 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 was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
13. I have noted the representations of interested parties, many of which comment on such matters as highway safety and the living conditions of nearby residents. To be clear, the planning merits of the development are not material to the considerations in this appeal.
14. Three main considerations in this case were set out and agreed in the CMC. These were drafted, having regard to the reason for the refusal of the LDC and the case made by each party at that stage. I also note what has since been agreed in the SOCG, which includes an agreed draft LDC (referred to above) in which alternative matters are specified. Accordingly, the main considerations in this appeal are as follows:
 - I. Whether the material change of use of the appeal site to a mixed use comprising a use as an adventure park and a use as a caravan and camping site has occurred;
 - II. If so, whether or not this use has continued substantially uninterrupted for a period of 10 years or more, beginning with the date of the breach. The date of the breach is the date on which the material change of use of the land to the described use occurred;
 - III. If not, whether the appeal site is used for some other purpose;
 - IV. If so, whether that use is lawful by reason of the grant of planning permission, because it has continued substantially uninterrupted for a period of 10 years or more beginning with the date of the breach, or for some other reason; and
 - V. The effect on any lawfulness of the use or uses identified on the appeal site of any planning permissions granted for the land.
15. The test of the evidence is the balance of probability and the burden of proof is on the appellant.

Reasons

16. My first task in this appeal is to consider the first and third main issues, as follows.

Has a material change of use of the appeal site to a mixed use as an adventure park and a use as a caravan and camping site occurred and, if not, has a material change of use to some other use occurred?

17. Having regard to the case made by the parties, at the CMC and in my CMC notes I drew to the parties' attention the case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, which assists in determining the planning unit and the use of it. In *Burdle*, it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key. This case established three broad categories of distinction:

- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary to the primary use.
- b) A single planning unit where the unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another.
- c) The unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. Each such area ought to be considered as a separate planning unit.

18. The use for which the LDC is sought is a single mixed use. Having regard to *Burdle*, for me to agree with the appellant's case on the first main consideration, I must be satisfied that the appeal site is a single planning unit that has a single occupier and within which the activities described as an adventure park and caravan and camping are occurring. I must also be satisfied that none of these activities are incidental or ancillary to the other, and that these activities are neither physically nor functionally separate.

19. On the matter of the occupier of the appeal site, I note the appellant's interest in the land and, despite the variety of individuals using the appeal site, I have no reason to find there is more than one occupier (i.e. the appellant) for the purposes of applying the approach in *Burdle*.

20. Accordingly, I move on to the other considerations set out in *Burdle*. In doing so, I note that the appeal site is an extensive area of land, but that the appellant has identified 14 fairly distinct areas within it. These are shown on the plan entitled 'Site Location Plan As Existing', numbered 8772-S 07-a. These are numbered Areas 4 and 6 to 17 (the identified Areas 1 to 3 and 5 fall on land outside of the appeal site). Having regard to the vastness and the variety of what goes on in the appeal site, I have taken the approach of considering each area or groups of areas in turn, identifying the activities going on in these parts of the site (i.e. whether they can be regarded as an adventure park activity, caravan and camping activity or some other type of activity). Where there is more than one activity taking place, I have considered whether one activity can be regarded as ancillary to the other, or whether they are both primary activities and, therefore,

primary uses of the appeal site. I have then considered whether there is any physical and functional separation.

Areas 8, 9, 10, 11, 12, and 14:

21. Starting with the central part of the appeal site, at the site visit I noted what I considered to be the main vehicular entrance and parking area for visitors to The Big Sheep attraction, which was within Area 10 and part of Area 11. I was taken from this area through a pedestrian kiosk, where I observed visitors queuing to gain entrance to the central part of the appeal site. Within this central area I observed theme park type rides, picnic areas, a boating lake, enclosed landscaped areas and outdoor play equipment. These were all within Area 14.
22. Within the central part of the appeal site I also noted several buildings and a marquee that were being used, or appeared to have been used, for a variety of purposes, including for small scale entertainment, themed events, a shop, cafés, a bakery, a brewery, an internal area for the public to feed and pet livestock, and for indoor play. These were located within Areas 8, 11 and 12. Within Area 9, I noted further external play equipment and rides.
23. There is substantial variety in the type of activities I observed in Areas 8, 9, 10, 11, 12, and 14, as described above and referred to in the written evidence. Despite this, it was clear to me that the vast majority of these activities are either part of The Big Sheep visitor attraction, or are activities that facilitate the attraction. Indeed, I note the planning permissions that have been granted in these areas for such development as an indoor play area, play and picnic areas, a change of use of an existing building to a micro brewery, offices and stores, parking areas, and external play equipment and rides. The most recent of these permissions are described as for the purposes of the attraction. Whilst there is variety in the type of development permitted by these various permissions, there appears to be no dispute that the development permitted is for the purposes of the adventure park.
24. I turn now to what the appellant describes as the holding of events, festivals, and rallies. At the site visit I observed several areas within this central part of the appeal site that I would describe as for events or live entertainment. This includes a tiered seated arena in the buildings in Areas 8 and 12, as well as a stage with seating and a marquee in Area 11. It appears that these spaces are used for what is advertised in the promotional leaflets as daily entertainment shows (such as sheep shearing or duck trials), as well as for the seasonal events advertised (including for Christmas and Halloween). There is no suggestion that this type of entertainment is an activity that is separate to the other adventure park activities described above. Indeed, the promotional leaflets suggest that this type of entertainment is to be expected as part of The Big Sheep attraction.
25. The character of the event space I observed in Area 9 is, however, somewhat different. In this area, I observed an expansive open grassed area sloping towards a large stage to the rear of the buildings in Areas 8 and 12. There was also a large marquee located on the eastern part of this area which contained a bar and seating. A large area of seating was also located to the front of the marquee, and I also observed bench seating facing towards the stage. In this part of the site I also noted what appeared to be a secondary access from Abbotsham

Road onto the site, close to the stage, although this did not appear to be in use by members of the public.

26. The appellant refers to numerous festivals held on the site, including the Devon Wellie festival and Pigstock. At the site visit, I noted an advertisement board in the Area 10 car park advertising a number of music acts and concerts at the site. I understand that these are ticketed events, some of which might be organised by external bodies, where those attending might run into the thousands.
27. These events are not the type of daily or seasonal events that visitors who specifically come to The Big Sheep attraction would expect as part of their entry fee. These large scale events are, therefore, an activity that is materially different to the adventure park activities. Having regard to the type and scale of concerts and festivals referred to by the appellant, I have difficulty in regarding this activity as part of The Big Sheep attraction. They are not, therefore, an activity that is ancillary to the adventure park, as a matter of fact and degree. I can agree with Mr Laister, that these events, festivals and rallies are what is described as one of the 'three categories' comprising the use of the wider appeal site. Area 9 is clearly set up and used for this larger scale entertainment that is not comparable to the smaller attraction shows that take place elsewhere on this central part of the appeal site. This is, therefore, a primary activity taking place in Area 9.
28. Bringing all of the above together, I find that the visitor attraction, described as an adventure park, is a primary use of Areas 8, 9, 10, 11, 12, and 14, and the adventure park activities I have described above are either part and parcel of this primary use (such as the play areas, rides, and small scale daily/seasonal entertainment), or are ancillary to it (such as the car park and café). I also find the large scale events to be a primary use of Area 9. I note that the appellant does not suggest that caravanning and camping has taken place on these areas. There can, therefore, be no suggestion that this is a primary use taking place on these parts of the appeal site.
29. I turn now to whether there is any functional or physical separation between these two primary uses. Despite what appears to be the principal activity within Area 9, I note above the play areas within this part of the site, which are open to the remainder of this larger area. Furthermore, I noted that Areas 8, 9, 10, 11, 12, and 14 are closely related to each other and there was free movement of visitors between these areas (save, of course, for the entrance to the site from the car park via the entrance kiosk). There is, therefore, little physical separation and no functional separation between these activities or the areas on which they take place.
30. Whilst my findings above mean that I can conclude that Areas 8, 9, 10, 11, 12, and 14 occupy the same planning unit, I must now consider what is suggested by the appellant, which is that these parts of the appeal site are not the extent of the planning unit in this case. Their case is that the planning unit extends to land outside of these areas, upon which they suggest that other adventure park activity, events and camping and caravanning take place.

The Combat zone in Area 15:

31. At the site visit, I noted that this part of the appeal site is occupied by an area on which outdoor combat games are played by visiting members of the public. Prior to the application reference 1/0975/2013/FUL, which relates to land in this part of

the appeal site, it appears that part of Area 15 had already been used for these purposes. I say this because the application sought permission for an extension to the existing combat zone into the land, the use of which is described in the application as 'agricultural land'.

32. Although the combat area was not entirely enclosed, access to it did not appear to be as open as other parts of the central area of the appeal site. By this I mean that it did not appear to be an open play area with unrestricted access to it by visiting members of the public, unlike other parts of the site I describe above. This area was fairly contained with landscaping and other such physical features; public access to it appeared to be controlled via a main entrance cabin, where I assume visitors would be prepared for their combat games session.
33. Notwithstanding this, the purpose of this combat zone is to provide entertainment to members of the public visiting The Big Sheep. In my judgement, this activity is entirely consistent with the other entertainment activities taking place in the areas I describe above. Accordingly, and despite a degree of physical and functional separation of the activities on it from other activities on the site, I find as a matter of fact and degree that the area occupied by the combat zone is part and parcel of the adventure park use. Indeed, I have no reason to doubt that this is what the Council intended to permit when it determined the 1/0975/2013/FUL application.
34. There is no suggestion that there has been camping and caravanning on the land occupied by the combat zone. Accordingly, I can conclude at this stage that adventure park activity takes place on the combat zone that occupies Area 15, and that it is within the same planning unit as Areas 8, 9, 10, 11, 12, and 14.

Area 16 and the animal enclosures in Area 15:

35. A small part of Area 15 is occupied by several open sided timber and metal sheet buildings and small enclosed areas, used to keep livestock (donkeys, goats, highland cows, etc.). These are located along the path to the east of the combat zone. In addition to this, I also observed animals being kept elsewhere on the site (mainly sheep and pigs), as one would expect on a farm. They were in field parcels enclosed with established hedgerow or agricultural type fencing and gates in Area 16, as well as Areas 13 and 17.
36. There can be no doubt that the keeping of animals is an activity that occurs in certain parts of the appeal site. The evidence also refers to staff being on site for lambing season. The appellant acknowledges that animals are grazed and bred on the land. Nevertheless, the appellant says that animals are not kept on the site for the purposes of agriculture. They say that this activity forms 'a functional aspect of the attraction'.
37. The animals kept might well be used in the displays and entertainment in the main attraction. Indeed, the animals I observed in the main buildings in Area 12 were clearly an attraction of the adventure park. Visitors may also be able to walk the site to view the animals being kept in field parcels, such as that in Area 16. Nevertheless, I cannot ignore that the keeping and breeding of animals is an activity that falls squarely within the definition of agriculture at section 336 of the 1990 Act. Whilst the evidence does not indicate that the animals are kept and bred for any of the purposes specified in section 336 (for the production of food, for example), the list of purposes specified in section 336 is not a closed list.

38. Furthermore, the keeping and breeding of animals is, in my judgement, a distinctly different activity to the other activities on the appeal site, including the adventure park, the events, and camping and caravanning.
39. I have had regard to the LDCs that were granted in the decisions drawn to my attention (Willows Activity Farm and Piglets Adventure Farm). Whilst I note what the appellant tells me about what types of activities went on at these sites, I have not been provided with the details submitted with those LDC applications to make a meaningful comparison with the case before me. The description of what was found to be lawful is also of limited assistance as this does not set out in any meaningful way the characteristics of the use found to be lawful, in accordance with the PPG. These LDCs do not, therefore, alter my view.
40. Having regard to the above, I am not persuaded that agriculture is not an activity that occurs on the appeal site. Whether it is an ancillary or primary activity is, of course, another matter.
41. At the time of my visit, Area 16 was being used to keep animals in the manner described above. The evidence does not indicate that what I observed was out of the ordinary. As such, agriculture is an activity that takes place in Area 16. Despite this, the appellant says that Area 16 is 'regularly used as an open space to run various activities'. The appellant's statutory declaration refers to the 'Pop-up Sports' club that they say operates holiday clubs on the land in school holidays. A photograph of archery taking place in this area is also provided, and in this I can see the track of the adjacent roller coaster in the background. These activities are, in my judgement, entirely consistent with an adventure park use.
42. The appellant also refers to camping and caravanning on these field parcels. Unlike the adventure park activities the appellant describes, as referred to above, there is little detail in the submissions to demonstrate the frequency or duration of this activity on this part of the site. In his statutory declaration, the appellant suggests that photographs provided at exhibit 18 show camping in Areas 16 and 17. However, the location of the camping in the first photograph on this page is not discernible and the camping shown in the second photograph is clearly of Area 4; Abbotsham Road can be seen to the south and the high ropes course and adventure centre visible to the north.
43. Having regard to the above, I find it more likely than not that Area 16 has a dual purpose for both agriculture and as an activity space for the adventure park. Although this part of the site is enclosed, I can agree that it has a close physical relationship directly adjacent to the main activity areas, including the roller coaster and combat zone. It is also enclosed with these activities (i.e. Areas 11, 14 and 15) by the internal access track. In view of this and the evidence of the activities that regularly take place on it, I find as a matter of fact and degree that Area 16 falls within the same planning unit as Areas 8, 9, 10, 11, 12, and 14. I conclude the same with regard to the animal enclosures I observed in Area 15. Although these enclosures appeared more of a permanent, rather than intermittent agricultural use, they had a close physical relationship to the main attraction and are fairly open to the play areas and attractions I mention above.

Area 17:

44. At the time of my visit, the field parcels in Area 17 were being used to keep animals, which I conclude above is an agricultural activity.

45. The appellant has referred to a tractor ride taking place as an attraction in this area since 2001. They say that the animals kept in this field are 'exhibits for the customers'. Whilst I note reference in the promotional leaflets to these tractor rides, it is not clear whether the route of the 'tractor safari' is throughout Area 17, including into all of the field parcels it contains, or just along the internal track I observed, which only dissects the easternmost part of Area 17. Furthermore, the appellant does not describe activities taking place within the field parcels in Area 17, as they have in Area 16. The evidence of the adventure park activity in Area 17 is, therefore, limited. There is also little evidence of camping and caravanning in this part of the site.
46. There is a degree of connection between the keeping of animals in this part of the site and the adventure park activities taking place elsewhere. Nevertheless, the field parcels in this area are enclosed with established hedgerows, fencing and gates, and the vast majority of this part of the site is physically detached from the main core of the adventure park and entertainment activities. Unlike Area 16, the vast majority of Area 17 is physically separate and distinct, separated from the remainder of the appeal site by the field enclosures and the internal track.
47. The appellant refers to the original planning permission (reference 1/0571/1987) for the change of use of a large part of the appeal site to an agricultural exhibition centre. The site plan for this application includes Area 17. However, the more detailed plans approved as part of this application state that this land is to be used for 'sheep and cattle grazing'.
48. Notwithstanding this and the Council's case that this permission was not implemented, the evidence demonstrates how large parts of the 1987 site have been used and have changed organically since the permission was granted for an agricultural exhibition centre. The appellant acknowledges that an agricultural exhibition centre is not an accurate description of the existing visitor attraction, which they say has 'been operating since its change in focus in 2001'. Indeed, the later planning permissions for such development as picnic and play areas, plant retailing, play equipment and rides, and the use of the combat zone demonstrate this organic change to the nature of how the site is used; i.e. how the character of the site has changed. Furthermore, there is no suggestion that the use of the site as an agricultural exhibition centre continues or that such a use is materially the same as the existing use. Indeed, the use for which the LDC is sought does not include an agricultural exhibition centre as an element of the mixed use.
49. The character of the use of the appeal site has changed since this original permission was granted. I am not, therefore, persuaded that, because Area 17 is included within the land subject of the 1987 permission, it falls within the planning unit that exists at present and is occupied by the areas on which the main adventure park and large event activities occur.
50. All of the above considered, the evidence before me is not sufficient to demonstrate that, on the balance of probability, Area 17, or at least large parts of it, is part of the planning unit occupied by Areas 8, 9, 10, 11, 12, 14, 15 and 16 as a matter of fact and degree.

Area 13:

51. The appellant says that Area 13 is a section of woodland used 'as part of The Big Sheep since at least the 1990s'. They say that they have used the woodland for children's activities, combat games and nature walks, and that it is accessed daily by visitors to the site. They also describe Halloween events being run from this area. They say that this area has never been used for agriculture due to the tree cover. Neither do they suggest that camping and caravanning have taken place in Area 13.
52. The plan I have been provided with shows Area 13 divided into two parcels. These run along almost the entirety of the boundary of the appeal site with the A39. I observed both areas on my visit. The northernmost part of the site was all wooded, and in this I could see an entrance gate providing access to paths and a playhouse within the trees. There was also a sign saying 'welcome to Bluebell Woods'. All of what I saw is entirely consistent with what the appellant describes, which is, in my judgement, an activity that is part and parcel of the adventure park use.
53. I cannot say the same for what I saw on the southernmost part of Area 13, and doubt whether the activities described by the appellant take place on this part of the appeal site. I walked along the access track in this southern part, close to the A39, and although there was a copse of trees on this part of Area 13, I did not observe the obvious signs of daily public access and woodland play I observed in 'Bluebell Woods'. Furthermore, a substantial area was also occupied by enclosed field parcels being used to keep animals. These parcels were being used in much the same way as the parcels I observed in Area 17. This is not consistent with the appellant's claim of no agricultural use on this land.
54. This part of Area 13 was also occupied by a building, a yurt and enclosed play area, along with a parking area, all of which appeared to be used as a children's nursery. I saw very young children playing in this area in what I can only describe as a child care environment. I have noted reference in the evidence to the 'Bearfoot Ofsted Registered nursery', which I assume is the nursery I observed. The cabin pictured in the appellant's appendix 23 chronology is similar to what I saw on site.
55. There is no suggestion that this nursery is part and parcel of the adventure park or part of what is offered to those visiting The Big Sheep attraction. Neither does the evidence make clear whether or not the nursery school occupied the appeal site at the time the LDC application was made. The representations of interested parties indicate that it was, but that this does not have the benefit of planning permission. This is not disputed by the appellant.
56. In view of the above, I have no doubt that the northern part of Area 13 falls within the same planning unit as Areas 8, 9, 10, 11, 12, 14, 15 and 16. The evidence is not, however, sufficient to demonstrate the same with regard to the southernmost part, as a matter of fact and degree. This is not least because of the presence of the nursery.

Area 4:

57. The primary activity on Area 4 is described by the appellant as camping and caravanning. On this part of the appeal site I noted a large open grassed area, as

well as formal tent and caravan pitches. The entrance to Area 4 is from Abbotsham Road, and there is an internal access track that circles close to the perimeter of this area. I also observed the w.c. and washing facilities within this area.

58. The appellant describes the camping and caravanning as part of The Big Sheep 'offer' and says that reduced rates are given to campers who visit The Big Sheep attraction. Camping and caravanning in Area 4 also takes place in connection with large events held on the appeal site, particularly in Area 9. Camping for those attending the Pigstock event is an example of this. Accordingly, I do not think I would be at odds with any party by concluding that camping and caravanning for holiday and tourism purposes is a primary use of Area 4.
59. As for other activities in Area 4, the appellant refers to events, starting with the mountain boarding and mountain biking events. The photographs in appendix 24 of the appellant's submissions purport to show these events. These events appear to have taken place on land laid with a mountain bike track and jumps. However, several of the aerial photographs (particularly those from 2005 to 2009) show that this track was outside of the appeal site, to the north of Area 4. Furthermore, the permission for the mountain biking track (reference 1/0467/2002) relates to land to the north of Area 4, outside of the appeal site (save for a small notch of the appeal site extending north upon which the current w.c. and wash facilities are located). I have no doubt that camping for people attending these events took place in Area 4. However, the evidence indicates that the events themselves took place on land outside of the appeal site.
60. The appellant refers to such events as the North Devon Mini Run camping events, as well as the Devon and Cornwall Caravan and Motor Club rally. Whilst the appellant's appendix 23 photographs show Minis parked amongst tents, it is not clear whether the festival was contained within Area 4 or was held on another part of the appeal site, with just camping in Area 4.
61. The appellant's appendix 11 includes a representation from the instigator of the Pigstock festival, Mr Samuals, dated December 2012, who says that Pigstock has been held at the appeal site for the last 5 years. Whilst there is reference to the use of 'the field adjacent to the Ultimate Adventure Centre', it is not clear what use was made of Area 4; i.e. whether this area has, at any time, been used for the holding of the whole event or just camping for those attending the event. Nevertheless, they indicate that the festival itself has in more recent years been held from the 'new stage and event area' which I understand to be what I observed in Area 9.
62. I have no doubt that Area 4 is used for camping and caravanning for those attending events on the wider appeal site. Whilst I note the suggestion that events have taken place in Area 4, the evidence is not sufficient to demonstrate it is more likely than not that a primary use of Area 4 is for the holding of events. Indeed, the main purpose of some of the events the appellant refers to appears to be for camping and caravanning.
63. The appellant suggests that other activities that have taken place in Area 4 include mountain biking and mountain boarding. I note above the 1/0467/2002 permission for the mountain boarding area to the north of the appeal site. The appellant also points to the planning permission (reference 1/0022/2007/FUL)

which grants consent for the high ropes course and the 'permanent use of land for mountain boarding'. Although the site location plan submitted with that application includes Area 4, the operational development permitted (i.e. the high ropes course, bund and parking) is entirely on land outside of Area 4 and the appeal site. Furthermore, there is no suggestion that the mountain boarding area moved into Area 4. Indeed, the location plan identifies the 'existing mountain boarding site' on the land to the north.

64. It may well be the case that the 1/0022/2007/FUL permission granted consent for the use of Area 4 for 'mountain boarding'. The appellant has, however, indicated that the track has been removed and that in 2017 there was a move away from mountain boarding in the activity centre¹. Indeed, notwithstanding what the appellant suggests with regard to the 1/0022/2007/FUL permission, there is no suggestion that mountain boarding or biking has taken place on Area 4 in recent years. The aerial photographs from 2019 onwards support this.
65. The appellant refers to frisbee golf, which is suggested as being part of The Big Sheep activities. The evidence is not, however, sufficient to demonstrate that these activities amount to an element of the adventure park use being a primary use of Area 4, along with camping and caravanning. Furthermore, the Council suggest that 'disc golf' is an activity operated by the Ultimate Adventure Centre, and not The Big Sheep adventure park.
66. Whilst some of the representations refer to the need to remove sheep from parts of the appeal site prior to camping, there is little to demonstrate that Area 4 has been used for grazing or any form of agriculture in recent years, and more particularly since the site was laid out as I observed it on my visit.
67. There is also a static caravan occupying a corner of Area 4. The appellant has referred to this in his evidence regarding staff accommodation, and says that it is used by staff during lambing season. This indicates that it is accommodation that is neither the same as, nor associated with, the camping and caravanning use of the remainder of Area 4. It is not, therefore, accommodation that is ancillary to that use. Whether it is ancillary to any other use taking place elsewhere is a matter I will come to.
68. With regard to any functional connection between Area 4 and the remainder of the appeal site, I acknowledge above that some of those visiting the attraction or attending events at the appeal site might camp in Area 4. I cannot, however, be satisfied that this is a functional connection, for the purposes of *Burdle*. The evidence indicates that not all camping and caravanning that takes place in Area 4 is in connection with the adventure park. The appellant acknowledges that 'not all people who stay in the caravan and camping areas are coming to visit the theme park. Others are coming for a holiday in this part of Devon'. The evidence also indicates that camping on this land takes place in association with the adventure centre to the north of Area 4, which the appellant states is in a separate planning unit. Indeed, the 1/1012/2020/FULM planning permission for camping in Area 4 was granted on condition that the use was only in connection with the adventure centre.
69. Furthermore, this part of the appeal site contains all the facilities required for camping and caravanning to take place. Access to other parts of the appeal site

¹ Paragraph 26 of the appellant's statutory declaration.

is not necessary for this use to take place. This not only demonstrates a lack of functional connection, but also the physical separation of this activity from the other parts of the site.

70. Notwithstanding this, the part of Area 4 used for camping and caravanning is, in my judgement, a physically contained parcel of land. It is almost entirely enclosed with hedgerow, fencing, bunds and other such means of enclosure. Area 4 is also physically separated from the adventure park and events space to the south by the adopted highway along Abbotsham Road. This carriageway is an adopted highway and a main road that links Bideford to both Abbotsham and the nearby junction of the A39. This is, in my judgement, a material physical separation between Area 4 and the areas of the appeal site to the south of the road.
71. As a final point, the fact that a planning permission (reference 1/1012/2020/FULM) was sought and granted for the use of the vast majority of Area 4 for camping indicates that this part of Area 4 is a planning unit of its own.
72. Having regard to all of the above, the camping and caravanning taking place on Area 4 is not only materially different, but also physically and functionally separate from the activities taking place in other parts of the appeal site, in particular Areas 8, 9, 10, 11, 12, 14, 15, 16 and part of 13.
73. As for the staff accommodation, the appellant says that this is used for staff during the lambing season and that the caravan was moved to its current location in 2018 to be closer to the field used for lambing at this point. Whilst at that time lambing may have been taking place on Area 4, the evidence indicates that this is no longer a use of this part of the appeal site. Indeed, the appellant does not specify where lambing now takes place, which necessitates the need for this accommodation. Evidence of a functional connection between this accommodation and any of the uses I have identified as taking place elsewhere on the appeal site is, therefore, limited. Furthermore, I have noted above that Area 4 as a whole is physically separated from the remainder of the appeal site. All of this considered, I am unable to conclude that the staff accommodation is ancillary to the uses taking place elsewhere on the appeal site, as a matter of fact and degree.
74. The limited evidence regarding this staff accommodation indicates that it is neither ancillary to, nor functionally connected with, the camping and caravanning use of Area 4. Furthermore, it occupies a part of Area 4 that is fairly distinct and separate from the larger camping and caravanning area. This points to this activity occupying a planning unit of its own.
75. All of the above allows me to conclude that, as a matter of fact and degree, Area 4 is not within the same planning unit as that occupied by the parts of the appeal site to the south of Abbotsham Road.

Area 6:

76. Area 6 is to the west of Area 4, and there are internal tracks linking these two parts of the appeal site. At the time of my visit, a part of Area 6 was enclosed with temporary fencing and appeared to be used as a compound for machinery and vehicles associated with substantial ground or engineering works I saw going on to the rear of the dwellings to the west. In view of this, I was not able to enter Area 6 and observe all parts of it.

77. Although I note the permission granted in 1994 for the storage of waste materials, the appellant says that this use ceased. They say that this part of the site is at present used for the 'storage of bulky items, including building materials for maintaining and improving the site; management of waste, vehicle and machinery parking', which the appellant says 'facilitates our operations across the whole site'.
78. The Council describe this as 'agricultural land' although they refer to 'agricultural storage'.
79. There is no suggestion that camping and caravanning, events or adventure park activities take place on this part of the appeal site. Whilst the appellant suggests that the storage activity they describe is associated with what goes on 'across the whole site', there is little in the evidence to substantiate this. I acknowledge the ongoing works I saw during the site visit on this part of the site might be temporary and might have started after the LDC application was made. Nevertheless, I cannot be satisfied from my own observations that the ordinary activity on this part of the site is as described by the appellant.
80. Notwithstanding this, like Area 4, Area 6 is also a physically contained part of the site, due to its topography and landscaping around its perimeter. Although I noted the track from Area 4 to Area 6, I would not regard Area 6 as open to Area 4. It is also physically separated from the southern parts of the appeal site by Abbotsham Road. All things considered, the evidence is insufficient to demonstrate that, on the balance of probability, Area 6 is within the same planning unit as other parts of the appeal site, as a matter of fact and degree. That includes Areas 8, 9, 10, 11, 12, 14, 15, 16 and part of 13, as well as Area 4.

Area 7:

81. At the time of my visit, this part of the appeal site was a field parcel enclosed with a hedgerow and divided in two by a fence and gate. Vehicular and pedestrian access to this part of the site is via an entrance off Abbotsham Road. I observed an area of hard surface adjacent to the site entrance. Otherwise, the land was grassed.
82. The parties agree that car parking on Area 7 occurs for a period of around 3 months of the year, as well as during bank holidays outside of the months of July to September. This leaves almost three quarters of the year when the parking of vehicles on this land does not take place.
83. The evidence refers to dog agility classes for one year, although not suggested as an existing activity. They also say the land is used for car boot sales. The duration and frequency of these is not, however, clear. Nevertheless, they are, in my judgement, activities that are materially different to car parking.
84. The Council says that the land is used for agriculture. The appellant refers to this as the permitted use of Area 7, and also mentions grazing on the land², which is an activity that I have already concluded is for the purposes of agriculture. The planning application (reference 1/0745/2000) made by the appellant is for the access to Area 7, and states that this was required for 'farm machinery' and 'sheep movements', as well as occasional parking 'a few days a year for overflow

² Paragraph 2.36 of Mr Laister's proof of evidence.

- carparking'. The use of the land for agriculture is not materially the same as car parking.
85. With regard to any camping and caravanning activity on this part of the site, I note the representations of Mrs Turner (the appellant's mother, appendix 9) who recalls the use of 'Lower Greenfield' (Area 7) as a registered Camping and Caravan Club site 'for many years'. Whilst Mrs Turner indicates that this use may have continued for 'up to a decade', they say that this was not something they continued when they took over the farm. The indication is that this regular, albeit historic use ceased around the early 1960s.
 86. Mr Laister refers to evidence of 'sporadic caravan and camping' since these early years 'until the Appellant more purposefully advertised again from 2001 onwards'. However, the evidence of more recent camping and caravanning is not specific to Area 7. It is referred to in a general way across the appeal site. Indeed, many of the local residents refute that camping and caravanning is a recent activity in Area 7.
 87. Whilst I have noted the various activities that have taken place in Area 7, the evidence is not sufficient for me to conclude on what this means for the existing use of Area 7, as a matter of fact and degree. On the one hand these individual activities might each be temporary uses of the land that take place at certain times of the year and then cease. In the alternative, they might together comprise a single mixed use of Area 7, where the character of the use is such that the duration and intensity of certain elements of the mixed use, including car parking, fluctuate throughout the year. This was the case in *Webber v Minister of Housing and Local Government* [1968], which is referred to by the appellant. There is also the question of whether certain of the activities mentioned have taken place on separate parts of the land at the same time. I say this mindful of the stock proof fencing I observed dividing the land in two and that car parking appears only to have occurred on the western most portion of Area 7.
 88. Notwithstanding the above, I am able to conclude that Area 7 is not within the same planning unit as any other areas of the appeal site. I acknowledge that overflow parking on this area is associated with The Big Sheep attraction and that this is, therefore, an activity that is closely related to the adventure park use. Nevertheless, this occurs for around only a quarter of the year. As for the activities at other times of the year, there is little to demonstrate for the purposes of *Burdle* that there is a functional connection between those and activity on other parts of the appeal site. I conclude the same for any camping and caravanning on Area 7 for the same reasons I have already given for Area 4.
 89. Furthermore, as with Areas 4 and 6, Area 7 is also a physically contained parcel of land. It is enclosed with an established hedgerow and gate. It is also physically separated from the adventure park and events space by the adopted highway along Abbotsham Road, and from Areas 4 and 6 by the highway along its north east boundary.
 90. Having regard to all of the above, although there is a connection between some periodic activities on this land that is associated with the adventure park, I cannot conclude as a matter of fact and degree that this part of the appeal site is within the same planning unit as the areas occupied by the adventure park and events space. Neither is there evidence to demonstrate a physical and functional

connection between the activities on this part of the site and those taking place in Areas 4 and 6.

Summary:

91. To summarise this first part of my decision, having regard to the evidence before me, and applying the appropriate test to this evidence, I find as a matter of fact and degree, as follows:
- i. That Areas 8, 9, 10, 11, 12, 14, 15, 16 and the northern part of Area 13, as identified on the 'Site Location Plan As Existing', numbered 8772-S 07-a, are all within the same planning unit which is in a mixed use for the following purposes:
 - as an adventure park, which includes a boating lake, children's rides, internal and external play equipment, internal and external entertainment space for daily and seasonal adventure park entertainment, and open areas for picnicking, play and seasonal activities;
 - for the holding of large entertainment events, concerts and festivals; and
 - for agriculture.Ancillary to this mixed use includes the car park, café and restaurant, the shop, offices, store rooms and the micro brewery;
 - ii. That the vast majority of Area 4 is used for camping and caravanning for holiday and tourism purposes and that it is not in the same planning unit as the areas referred to in i. above;
 - iii. That a part of Area 4 is used for staff accommodation and that it is not in the same planning unit as the areas referred to in i. or ii. above; and
 - iv. That Area 7 is used periodically for seasonal overflow parking associated with the use identified in i. above, but this area is not within the same planning unit as the areas identified in i., ii. or iii. above.
92. As for the remaining parts of the appeal site (Areas 17 and 6, and the southern part of Area 13), I have found that the evidence is not sufficient to demonstrate, on the balance of probability, that these parts of the appeal site are used for the same purposes and fall within the same planning unit as the areas identified above, as a matter of fact and degree.
93. For the above reasons, I conclude that the appeal site is not, as a matter of fact and degree, used for the purposes for which the LDC is sought. Accordingly, I cannot conclude that the use of the appeal site for a mixed use as an adventure park, and caravan and camping site was lawful at the time the LDC application was made.

Were any of the uses identified above lawful at the time the LDC application was made?

94. In view of my conclusions above, I move on to consider the remaining main considerations I identified earlier in this decision, which are whether any of the uses I have been able to identify as occurring on the appeal site are lawful and the effect of any planning permissions granted. In light of my conclusions above, I

will confine my consideration to the use taking place on Areas 8, 9, 10, 11, 12, 14, 15, 16 and the northern part of Area 13; the use taking place on Area 4; and the uses taking place on Area 7. These are broadly consistent with the areas identified in the description in appendix D of the SOCG.

Areas 8, 9, 10, 11, 12, 14, 15, 16 part of 13:

95. The use I have identified taking place on this part of the appeal site is, in short, a single mixed use comprising an adventure park, large scale events and agriculture, with ancillary uses. Although permissions have been granted for individual operations or changes of use of parts of this central area, most of which were related to the adventure park, there is no suggestion that the use I have identified across all parts of this central area has the benefit of planning permission or that it is otherwise permitted. Accordingly, I must consider whether this use has continued substantially uninterrupted for a period of 10 years or more, beginning with the date on which the use first commenced.
96. As I have mentioned earlier, the adventure park element of the mixed use appears to have begun and grown organically following the use of the site as an agricultural exhibition centre. The activities on the site in the earlier years described in the appellant's statutory declaration, such as demonstrations, sheep racing and lamb feeding, appear consistent with the use permitted in 1987. The promotional brochures demonstrate the introduction in later years of more and more children's play equipment and play areas (e.g. the bouncing pillows), and children's rides (e.g. the boating lake, train ride and roller coaster), as well as entertainment and activities more consistent with an adventure park (e.g. the combat zone). This change in the character of the site is acknowledged by the appellant who says that the visitor attraction has been operating since the change in focus since 2001.
97. I also note the permissions granted, particularly those granted in more recent years, for development that is clearly associated with an adventure park, rather than agricultural exhibition centre. Examples of these are the 2009 permission for the scenic ride; the 2010 permission for the carousel, bouncing pillows and train ride; and the 2013 permission for the combat zone extension.
98. Having regard to the above, I find it more likely than not that there has been a material change of use to this central part of the appeal site from its use as an agricultural exhibition centre to a use as an adventure park, as a matter of fact and degree. As such, any lawful use rights established by the permission for an agricultural exhibition centre have been lost. I have no doubt that the adventure park use has existed on this central part of the appeal site for a substantial period and that this has occurred alongside agriculture. However, the introduction of large scale entertainment events, concerts and festivals at the site has, in my judgement, brought about a further material change in the use of this part of the site and, therefore, a new chapter in the planning history.
99. Like the adventure park, the evidence indicates that large scale entertainment events, concerts and festivals, has also grown organically over time. However, the evidence indicates that this might be a more recent change to the character of the site.
100. In his proof of evidence, the appellant says that festivals have been held on the site since 2017, which includes the Pigstock festival; the indication is that this is

one of the largest of the events held on site. I have already referred to the appellant's appendix 11, which includes a representation from the instigator of the Pigstock festival. In this, they refer to the festival having been held at the appeal site for the last 5 years. There is reference in the evidence to 14 festivals being held in 2020 and 18 in 2021. The appellant's statutory declaration also refers to the festival stage being installed in 2022, along with seating for events, a bar and undercover food areas.

101. All of the above demonstrates that there has been a change to the character of the use of the land and it is this evidence in particular that has led me to conclude that the holding of large entertainment events, concerts and festivals is a primary element of the mixed use taking place on this part of the appeal site. However, because these incidents are within the last 10 years, this evidence does not assist in demonstrating that the existing mixed use commenced and has continued for a period of 10 years prior to the LDC application being made.
102. I have noted reference to the events being held on the appeal site in earlier years, including the North Devon Mini Run camping rally being held as early as 2013. However, the evidence refers in a general way to this being held at the appeal site, rather than it being held within these central areas. I have also noted the reference in the promotional brochures to such events as the North Devon Mind, Body and Soul festival and wedding shows. There is, however, little evidence regarding what these involved, where in the appeal site they were held, when these events were held, and their scale.
103. I have considered whether the holding of large events at the appeal site might be a temporary use of land that is permitted by reason of Part 4 of Schedule 2 of the 2015 Order. The evidence does not, however, show that the large scale events that take place each year do not exceed the number of days permitted, on the balance of probabilities.
104. Bringing all of the above together, I have no doubt that the activities comprised in the adventure park and agricultural element of the mixed use commenced more than 10 years prior to the date the LDC application was submitted. However, the mixed use I have identified of Areas 8, 9, 10, 11, 12, 14, 15, 16 and part of 13 includes a large events element, the introduction of which would have resulted in a material change of use of the land to the current use, as a matter of fact and degree. The evidence is not sufficient to demonstrate that the date on which this element of the mixed use, resulting in a material change to the existing mixed use, was at least 10 years before the requisite date.
105. Accordingly, I cannot conclude that the use of this central part of the appeal site for a mixed use comprising an adventure park, large scale events and agriculture, with ancillary uses, commenced and has continued substantially uninterrupted for a period of 10 years or more prior to the date the LDC application was made, on the balance of probabilities. The evidence is also not sufficient to demonstrate that this use (or an element of it) has the benefit of planning permission. For this reason, I cannot find this use of Areas 8, 9, 10, 11, 12, 14, 15, 16 and part of 13 to be lawful at the time of the LDC application.

Area 4:

106. Dealing first with the staff accommodation, the appellant refers to its use during lambing season, which they say is in the spring. This indicates that the staff

accommodation use is only seasonal and not continuous throughout the year. Furthermore, in the part of his proof of evidence on staff accommodation, the appellant says that the static caravan 'was first in Area 12 from 1990, then a new caravan stationed in Area 4 in 2018'. Even if the use of this accommodation on this part of the appeal site continued substantially uninterrupted since it was moved to Area 4, it would not have done so for a period of 10 years or more on the date the LDC application was made. It is, therefore, more likely than not that this use of part of Area 4 is not lawful.

107. As for the remainder of Area 4, the 1/1012/2020/FULM permission granted in 2021 appears to be pivotal in the planning history for the camping and caravanning use. The implications of this is something I will come to. First, I will consider the 10 year or so period prior to this permission, which is a period considered in the appellant's evidence.
108. Camping at the appeal site is referred to in the evidence as far back as 1947. Although I note the extract of the directory of camping and caravan sites at appendix 10, this is referred to by the appellant with regard to Area 7, not Area 4. Whilst many of the representations collected in the appellant's appendix 11 refer to camping, many of these are vague with regard to when the camping commenced. Furthermore, the location of the camping is referred to as taking place in the wider appeal site, rather than Area 4 specifically. I have already noted the reference in evidence to the North Devon Mini camping rallies. Again, the representations in appendix 11 do not refer to the specific location of this camping.
109. The evidence of camping on Area 4 is first referred to in association with the mountain biking events held on the land to the north of the appeal site. The appellant's appendix 23 refers to camping at the 'World Freestyle Championships for Fat Face's 'night series'' in 2006. Some of the representations included in appendix 11 refer to mountain biking events in 2010, 2011 and 2013 and camping on the adjoining land associated with those events. I also note the photographs which are described as the camping rallies on this part of the site in 2015, 2016 and 2017. Mr Samuals' representations at appendix 11, dated December 2024, refer to festival camping for the Pigstock festival in the 5 years prior to this representation. This would, therefore, have included a year or so prior to the 1/1012/2020/FULM permission.
110. The above evidence regarding the period from 2006 onwards is more specific with regard to the dates and location of camping. There is, however, little to demonstrate it occurred in Area 4 every year from 2006, in excess of the number of days that would otherwise have been permitted by the 2015 Order or the legislation it superseded.
111. Indeed, when describing the existing use of the land that comprises Area 4, the 1/1012/2020/FULM application form records that 'from 2010 - 2020 the field has always been used for 28 day camping under PDR'. Whilst I note the appellant's representations regarding this statement, there is a lack of evidence to demonstrate that this statement, when made, was not correct, on the balance of probabilities.
112. The appellant suggests that the camping that is referred to in evidence prior to the 1/1012/2020/FULM permission did not have the benefit of the 2015 Order (or its

predecessor) because it included caravans as well as tented camping. Again, I have noted reference to caravans and caravan rallies in the appellant's statutory declaration and the representations in appendix 11. However, having regard to the 10 year or so period prior to the 1/1012/2020/FULM application, this evidence is vague with regard to the location of the caravans or caravan rallies referred to and does not specify the duration of this activity.

113. Notwithstanding the above, even if I were persuaded that camping and caravanning took place, in breach of planning control, in Area 4, in the 10 years prior to the 1/1012/2020/FULM grant of permission, I am still unable to conclude that it became lawful by the time that application was made. For a breach of planning control to become immune by reason of section 171B of the 1990 Act (and, therefore, lawful), it must be demonstrated that it has continued, substantially uninterrupted, for a period of 10 years or more. If, at any time during that period, the Council were unable to take enforcement action (for example, because no breach was taking place), that time could not count towards the rolling period giving rise to immunity. In considering this, I have had regard to the caselaw drawn to my attention, including *Biss v Smallburgh Rural District Council* [1965] and *Webber*.
114. There is no suggestion that in the period prior to 2021, camping and caravanning took place all year round. Indeed, at paragraph 2.6 of the appellant's proof of evidence they refer to camping in the summer season (April to September) and the removal of sheep during this period. The representations of Mr Samuels, Ms Milne and Mr Wye, the groundskeeper, in appendix 11 refer to the land having to be cleared of sheep prior to any camping. This indicates that outside of the times Area 4 might have been used for camping and caravanning, it was more likely than not used for grazing, which is an alternative and incompatible use. Whilst I acknowledge that the use of land for the purposes of agriculture does not involve the development of land³, that it takes place indicates the periodic cessation of any activity comprised in the use of the land for camping and caravanning.
115. I have considered the appellant's suggestion that, despite the above, the use of the land for camping and caravanning continued outside of the summer season. This is a matter considered in *Biss*, which concerned itself with the continuation of the use of a site as a caravan site, despite the absence of caravans. I have also had regard to *Webber*, which considered a site where seasonal camping occurred. The cases, and those that qualified the principles they established, indicate that whether a use continues, despite seasonal activity, is a matter of fact and degree.
116. In this regard, I have considered the permanent services and features I observed in Area 4, all of which indicate to me that there is at present a continuous use of the land for camping and caravanning, despite the absence of tents or caravans at the time of my visit. As I have noted above, the appellant indicates that the land was laid out in this way (they say, as a caravan site) in April 2020. This is evident from the 2020 aerial photograph on which I can see the perimeter track, and the caravan and camping bays I observed on my site visit. These features are not visible in the aerial photographs prior to 2020. Indeed, the aerial photographs prior to this date show an open field consistent with a use for grazing.

³ Section 55(2)(e) of the 1990 Act.

117. Furthermore, the w.c. and wash facilities I observed on site are not visible in the aerial photographs until June 2022, when the appellant says that they were installed. Prior to this, I note the representations of Jazmin Milne of the Legendary Grand Tour Mini Run camping, who refers to the delivery to and subsequent removal of toilet and shower blocks from the site. These are also referred to in the representations regarding the mountain biking events. The appellant also refers to the installation of water and portaloos in the summer period.
118. It is, therefore, more likely than not that services and works that facilitate a camping and caravanning use of Area 4 did not remain on the land permanently until at least 2020. Prior to 2020, the evidence does not indicate the permanent presence of any features or facilities that would have otherwise indicated an ongoing camping and caravanning use of Area 4 outside of the summer periods referred to by the appellant. Accordingly, had the Council visited Area 4 prior to 2020, outside of the camping and caravanning periods, and particularly when it was in use for grazing, it is unlikely that it would have detected a use of the land for camping and caravanning.
119. For the above reasons, during the 10 year or so period prior to the 1/1012/2020/FULM permission, I cannot say that, as a matter of fact and degree, camping and caravanning was the normal use of the land, for the purposes of *Webber*. It is more likely than not that any use of Area 4 for camping and caravanning in breach of planning control was intermittent during this 10 year period and that outside of the summer season referred to by the appellant, it would have ceased. There would, therefore, have been times during this period that the Council could not have taken enforcement action against the use. Any use of Area 4 for camping and caravanning did not, on the balance of probabilities, continue substantially uninterrupted for a period of 10 years or more prior to the permission granted by 1/1012/2020/FULM. The use was not, therefore, lawful at this time.
120. The 1/1012/2020/FULM permission permitted, amongst other matters, the 'change of use of land from agricultural to recreation for the purpose of camping'. Whilst the appellant acknowledges that this is a temporary permission, they suggest that this permission was not implemented. I cannot agree. The application clearly sought permission for development already carried out. There is no suggestion that the development permitted (described as 'retrospective works of on site tracks') was not part and parcel of the camping use that is the subject of the permission. No standard time limit condition was imposed, indicating that the permission was granted for what had already gone on.
121. I acknowledge that not all camping might have been in connection with the Ultimate Adventure Centre, and that camping other than in tents might have occurred. Nevertheless, this would have amounted to a breach of the conditions of the planning permission, not the continuation of any former breach of planning control comprising a camping and caravanning use.
122. As I have concluded that any use of the land for camping and caravanning in breach of planning control prior to the 1/1012/2020/FULM permission was not lawful, I cannot agree that the permission was not implemented because it was not needed (*Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578).

123. The appellant says that once the temporary permission expired, 'the lawful use of the land reverts back to the previous lawful use prior to the temporary permission coming into effect'. Even if I were to regard any previous camping and caravanning use as materially different to the use permitted in 2021, my conclusions above mean that the previous camping and caravanning use would not be a purpose for which the land was normally used before the permission was granted. I say this, having regard to the provisions of section 57(2) and (5) of the 1990 Act.
124. On a separate matter, I note the suggestion that the above provisions would allow for the use of Area 4 for the purposes of mountain boarding. As I have noted earlier in this decision, the appellant has indicated that the track has been removed and that in 2017 there was a move away from mountain boarding in the activity centre, with the introduction of a canoe lake. Furthermore, the Council point to the 1/0910/2010/FUL permission, which granted consent for a land and water based assault course. The application form states that the proposal includes the levelling of the land previously used for mountain boarding, returning it to its original state. There is no suggestion that this permission was not implemented. Accordingly, the evidence indicates that, prior to the grant of 1/0910/2010/FUL permission, the use of Area 4 for mountain boarding had been lost, on the balance of probabilities, rather than lawful. I conclude as such, having regard to *Trustees of Castell-y-Mynach Estate v SSW* [1985] JPL 40, referred to by the appellant.
125. Were I to agree with the appellant, and conclude that the 1/1012/2020/FULM permission had not been implemented, and were I to regard 2020 (when the appellant says that Area 4 was laid out as a caravan site) as the commencement of a permanent change of use of Area 4 for camping and caravanning in breach of planning control, this finding would mean that the use commenced less than 10 years prior to the date the LDC application was made.
126. All of the above considered, the evidence is not sufficient to demonstrate that the use of Area 4 for camping and caravanning has the benefit of express planning permission, that it is otherwise permitted, or that it has continued substantially uninterrupted for a period of 10 years or more, beginning with the date of the breach, on the balance of probabilities. The use was not, therefore, lawful on the date the LDC application was made.

Area 7:

127. I note the agreed position regarding Area 7, set out in appendix D of the SOCG. This is that the use of this land as an overspill car park in association with The Big Sheep between July to September and bank holiday weekends is lawful. Whilst I have no reason to disagree that this periodic use of the land has occurred each year for in excess of 10 years, I cannot agree that this is a matter for which an LDC can be granted.
128. An LDC cannot operate as a planning permission can, where a use can be permitted, but limited by condition for certain periods of a year. If a use becomes lawful by reason of section 171B of the 1990 Act, it means that it has continued, substantially uninterrupted, at all times of the year, for a period of 10 years or more. An LDC can be granted for a mixed use where the characteristics of that use are specified in such a way as to indicate the periods during the year where

one element of the mixed use is more intensive than the others (as *Webber* suggests). However, an LDC cannot be granted with a qualification that the use found lawful only occurs during certain times of the year, as suggested.

129. Whilst there is evidence of a number of activities on Area 7, including car parking, I have already said that the evidence is not sufficient for me to conclude on whether these are individual temporary activities that take place at certain times of the year and then cease, or in the alternative, whether they comprise a single mixed use of Area 7, which includes car parking, where the duration and intensity of certain elements of the mixed use fluctuate throughout the year (*Webber*). If it is the former, then the car parking use could not be lawful by reason of section 171B of the 1990 Act as the commencement of the use each year would constitute a new breach of planning control. If it is the latter, I do not have sufficient evidence in this case to conclude on what the other elements of the mixed use might comprise or the characteristics of this use, let alone whether it was lawful at the time of the LDC application.
130. On a separate matter, the appellant suggests that camping and caravanning is a lawful use of the land because of when it commenced. It is clear that Mrs Turner's reference to the running of 'a camping and caravan site' on the land was a historic activity. I say this because they say that this is not something they continued when they took over the farm, which was around the 1960s. This is corroborated by the extracts of the directory of camping and caravan sites at appendix 10, which includes an extract from 1947.
131. Having regard to the above, it is more likely than not that the land was used for camping and caravanning prior to the appointed date, 1 July 1948. This appointed date is that referred to in section 57(7) and Schedule 4 of the 1990 Act, which sets out the special provisions as to land use in 1948. These provisions, 1 to 4, set out the circumstances where the provisions of section 57(1) of the 1990 Act do not apply; i.e. circumstances where planning permission is not required in respect of any use of land.
132. Whilst the appellant has referred to the appointed date, they do not refer to the provisions of section 57(7) or Schedule 4, and so do not indicate which of the provisions of this schedule apply in this case. Having regard to the evidence before me, the relevant provision is not obvious to me. The provisions of section 4 of Schedule 4 might be the most relevant, however this refers only to the use of land as a caravan site, rather than as a camping and caravan site. Whilst section 2 might also be relevant, the evidence does not specify or demonstrate whether the use of the land as a camping and caravan site was the normal use or an occasional use of the land on the appointed date. The land may also have been unoccupied on the appointed date, such that the provisions of section 3 apply.
133. The burden of proof is on the appellant. They have failed to demonstrate why they say that any use of the land as a camping and caravan site is lawful because of when it commenced.
134. Notwithstanding the above, even if the camping and caravan site use were found to be lawful by reason of section 57(7) of the 1990 Act, I cannot be satisfied that any established lawful use rights have not been lost. The appellant points to the circumstances when a lawful use might be lost, which includes abandonment. They might also be lost where there is a new chapter in the planning history. The

latter includes where there has been a material change in the use of the land, although *Trustees of Castell-y-Mynach Estate* also considers whether there have been any other uses when determining the matter of abandonment.

135. Despite the historic evidence of camping and caravanning on Area 7, there is no suggestion that this has been a permanent ongoing use of the land throughout each year since it first started. The evidence of other activities on the land indicate that it has not. Furthermore, Mrs Turner says that they did not continue this use when they took on the farm, which indicates the land was not used for camping and caravanning between around 1966 and 2001. This is a substantial period of non-use and runs contrary to Mr Laister's vague suggestion that the use continued at a low level and sporadically during this time.
136. Mrs Turner's evidence suggests a clear intention not to continue the camping and caravanning use of Area 7, as they say that they 'concentrated on building and developing the farm and chicken business'. Furthermore, there is no indication that any features remained on the land that would suggest the continuation of the camping and caravanning use, despite the absence of caravans and tents.
137. Turning to the evidence of other uses of Area 7 since camping and caravanning first commenced, whilst agriculture appears to have been an ongoing use of this land throughout the period considered, the evidence indicates that car parking as a primary activity on the land is more recent. The application form for the 1/0745/2000 planning application for the access to Area 7 indicates that, at this time, car parking on the land was 'for a few days of the year'. There has clearly been an increase in this activity since that time, which has resulted in the agreed position with regard to car parking on Area 7 at present.
138. I have been unable to conclude on whether the various activities on Area 7, including car parking, are intermittent uses that cease each year, or whether they are an element of a mixed use of the site. Either way, the introduction of seasonal car parking as a primary activity on the land has resulted in a material change to the character of the use of Area 7.
139. All of the above considered, even if the use of Area 7 as a camping and caravan site was lawful when it first commenced in the 1940s (by reason of section 57(7) of the 1990 Act), the evidence indicates that it was abandoned in the period between the 1960s and 2001, on the balance of probability.
140. In the alternative, and despite the evidence of Mrs Turner, if camping and caravanning continued on the land since it first commenced in the 1940s, I am still unable to conclude that it was lawful at the time the LDC application was made. I say this because the use has either been interrupted by agriculture and, more recently, car parking, or has become part of a new mixed use of the site with the introduction of seasonal car parking on the land for three months of the year. Either way, the evidence leads me to conclude that there has been a material change of use of Area 7 since camping and caravanning first took place.
141. For the above reasons, any lawfulness of a camping and caravanning use obtained by reason of section 57(7) of the 1990 Act, has been lost, on the balance of probabilities.
142. If camping and caravanning is part of a mixed use of Area 7, it may well be the case that it has become lawful by reason of section 171B(3) of the 1990 Act.

However, for reasons already given, I do not have sufficient evidence in this case to conclude that there is a mixed use of Area 7 and, if so, what the mixed use might comprise and how its character might be described, let alone whether it was lawful at the time the LDC application was made.

Areas 4, 7 and 16:

143. On a final matter, I note the invitation for me to grant an LDC in the alternative, which confirms the lawfulness of the use of Areas 4, 7 and 16 for temporary recreational camping, which would be permitted by reason of Class BA of Part 4, Schedule 2 of the 2015 Order. I cannot, however, do so in this case. The application subject of this appeal was made under section 191 for an existing use of the land, which I have found was not lawful on the date the application was made. Whether or not some other use might be lawful if it had been carried out on that date (i.e. an application made under section 192 of the 1990 Act) is not the matter before me.

Conclusion

144. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a mixed use as an adventure park, caravan and camping site is 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.

J Moss

INSPECTOR