Appeal Decision

Inquiry held on 25 August 2015
Site visit made on the same date

by Gloria McFarlane  LLB(Hons) BA(Hons) Solicitor (Non-practising)
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 September 2015

Appeal Ref: APP/B1225/X/15/3002181
Organford Manor Country Park, Organford, Poole, Dorset, BH16 6ES

- 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 H Simmonds against the decision of Purbeck District Council.
- The application Ref 6/2014/0353, dated 7 July 2014, was refused by notice dated 1 December 2014.
- 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 “Use of part of the caravan site edged red for the stationing of up to 45 caravans for residential occupation by persons over the age of forty five subject to conditions 1-3 of planning permission dated PLANNING PERMISSION Ref No 6/75/644 21 July 2011”.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Procedural Matters

1. Oral evidence was given to the Inquiry after the witnesses of fact had either taken the oath or made an affirmation.

2. Following information from a local resident and landowner, the area of the land edged red on the plan identifying the appeal site was slightly reduced and an amended plan was produced by the Appellant1 which was agreed by the Council. The appeal will be determined on the basis of this amended plan.

3. The address of the appeal site is variously referred to as, among other things, Organford Manor Country Park, Organford Manor Caravan Park and Organford Manor Caravan Park Homes. For the purposes of this appeal I will refer to it as the Country Park.

Main Issue

4. The main issue is whether the existing use of part of the caravan site, as shown edged red on the amended plan, for the stationing of up to 45 caravans for residential occupation by persons over the age of forty five was lawful on 7 July 2014.

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1 Document 1
The Appellant’s case – main points

5. The site has the benefit of planning permission as a caravan site and there are no conditions restricting its use or the number of caravans. The residential use is not materially different from a holiday use and therefore there has not been a material change of use or any intensification of use. The residential use of the site is restricted to people over 45 with no sub-letting by the owner/occupiers.

The Council’s case – main points

6. Planning permission was granted for land, including the appeal site, in 1976 for use as a static holiday and touring caravan site. The conditions imposed were altered as a result of a planning appeal in 2011 where the use was described as ‘Retain existing caravan site (Area “A” on the submitted plan) for 45 static holiday caravans and 10 touring caravans and an area (shown “B” on the submitted plan) for use by touring caravans and tents’. There are no conditions which limit or restrict how the static caravans in area “A” can be occupied.

7. The Council maintains that there has been a material change of use of the land from holiday/recreational use to residential occupation in that, among other things, there is no dispute that the static caravans are occupied as permanent residences; some of the static caravans have been enlarged; enclosed gardens have been formed; and outbuildings have been erected. There has been a consequent different demand on local services and facilities.

The site

8. The part of the Country Park with which I am concerned in this appeal is a gated community of static caravans set back from the road running between the A35 and Wareham Road. It is located within the Green Belt and close to Holton and Sandford Heaths which are designated Sites of Special Scientific Interest, Special Protection Area, Special Area of Conservation and Ramsar. There are a total of 45 static caravans within the land edged red. Land to the north west of these caravans has also been used, and remains in use, as a touring caravan site. The static caravans are sited on hard standings; are connected to mains electricity and water; and some have bottled gas for cooking/heating. Most of the static caravans have off-road parking for at least one vehicle and a small area of land, often enclosed by fencing, in use as a garden. Some have sheds/outbuildings. Some of the static caravans have been enlarged with extensions/conservatories.

Reasoning

9. The Planning Practice Guidance (the Guidance) provides advice about the information, standard and type of evidence that is required in a Lawful Development Certificate (LDC) application and says that ‘The applicant is responsible for providing sufficient information to support an application … In the case of an application for existing use, if a local planning authority has no evidence itself, nor any others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability’.²

² National Planning Practice Guidance – Lawful Development Certificates paragraph 006
10. It is therefore for the Appellant to prove his case, on the balance of probability, that the use applied for is lawful, not for the Council to disprove it.

**The application**

11. The application was made under s.191 of the 1990 Act on the basis that the use applied for was an existing use. This was confirmed by the Appellant at the Inquiry. It was also agreed at the Inquiry that the description should be amended to read ‘permanent residential occupation’ as that more precisely describes the actual use in accordance with the Guidance which states that ‘an application needs to describe precisely what is being applied for’.

12. It is the Appellant’s own evidence, as confirmed in the statement of common ground, that at the date of the statement of common ground, that is mid-August 2015, 36 caravans were in use for permanent residential purposes. I have no knowledge at all about how many caravans were in use for permanent resident occupation as at the date of the application. I, however, note that the Council takes no issue with the figure of 36.

13. There was also no specific evidence from the Appellant about the age of the occupiers of these caravans. An earlier version of the Park Home Rules provides that the Country Park is specifically for the over 45s with no resident children and the current Park Rules provide for the ‘holiday home owner’ to be over 45 years old. Whilst the latter may be a typographical error as suggested by Mr Eiser the fact remains that there is no evidence about the age of residents of the 36 caravans other than anecdotal.

14. No information was provided by the Appellant why the description included a reference to the conditions imposed on planning permission Ref No 6/75/644. In my opinion this reference is irrelevant because it does not relate to the description of the use.

15. By virtue of s.191(4) of the 1990 Act, I have the power to modify the description as stated in the application if I am satisfied of the lawfulness at the time of the application of the modified use. I will bear this in mind in my determination of this appeal.

**The planning unit**

16. The Parties agree, and I have no reason to disagree, that the Country Park comprises one planning unit as shown on Drawing No.1678-1 dated 10 June 1976. The area of land with which I am concerned in this appeal is shown on the agreed plan edged in red referred to above.

**The lawful use**

17. The Country Park as a whole, which includes the appeal site, has a long and somewhat confusing planning history. An Inspector grappled with this history in an appeal decision dated 21 July 2011. I heard representations from both Parties about the effect of this decision and my understanding is as follows:

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3 National Planning Practice Guidance – Lawful Development Certificates paragraph 005
4 Attached to a response to a Planning Contravention Notice – Appendix 20.3 to Mr Boyt’s proof
5 Document 2
6 APP/B1225/A/09/2111992 - Appendix 9.4 to Mr Boyt’s proof
18. The appeal was made under s.78(1)(a) against a grant of planning permission subject to conditions and by virtue of s.79(1) such an appeal may be allowed or dismissed or any part of the decision of the local planning authority may be reversed or varied whether the appeal relates to that part of it and the decision maker may deal with the application as if it had been made to him in the first instance.

19. Following agreement between the then Appellant and the Council about the description of what was being applied for the Inspector said 'It appears to me that the agreed wording comprises two elements. Firstly, it describes and seeks to authorise, works that have already taken place on the part of the site known as Area A. The description of the works is much the same as that described in the 2009 permission ... Secondly, it seeks a variation of the 1976 decision. Discussions and agreements at the Inquiry made it clear that the proposed variation of the 1976 permission would involve removing conditions that are no longer needed and substituting them with [other] conditions'.

20. That is therefore what the Inspector did. Firstly, planning permission was granted 'to replace and re-site static holiday caravans in Area A, as shown on plan 1678-1, and site new static holiday caravan as reception with pergola; erect 1 no electricity switchgear/distribution building; construct refuse bin storage facility; site audio/CCTV equipment pole; modify access road and install hardstanding (all retrospective) as shown on Drawing No 5518/SL501 Rev D at Oganford Manor Caravan park, Organford, Dorset, BH16 6ES' (the 2011 permission). No conditions were imposed on this planning permission.

21. Secondly, planning permission Ref No 6/75/644 granted on 15 July 1976 was varied by deleting a number of conditions and substituting two conditions from quashed planning permission Ref 6/2009/0351. The description of planning permission Ref No 6/75/644 was 'retain existing caravan site (Area “A” on the submitted plan) for 45 static holiday caravans and 10 touring caravans and an area (shown “B” on the submitted plan) for use by touring caravans and tents subject to conditions’ (the 1976 permission). No conditions relating to the restriction of occupation or numbers of caravans were imposed save for No 2 which, in effect, limited the use of a static holiday caravan as a reception and prohibited its use as holiday accommodation.

22. The general rule in construing a planning permission is that if it is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including any conditions attached and the reasons for imposing them. The principles go on to exclude reference to the planning application and other extrinsic evidence, unless such material is expressly incorporated into the permission. However, if there is an ambiguity in the wording of the permission it is permissible to look at extrinsic material, including the application, to resolve that ambiguity.

23. The description of the permitted development is, in my opinion, unambiguous in that both the 1976 permission and the 2011 permission expressly permit static holiday caravans in Area “A” and the 1976 permission limits the number to 45 static holiday caravans. The word ‘holiday is repeated in condition No 2 of the 1976 permission in describing the use of the Country Park ‘for the provision of static and touring caravan holiday accommodation’.

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7 Paragraph 12 of APP/B1225/A/09/2111992
8 R v Ashford BC ex parte Shepway DC – Document 6
24. The Appellant relies on the case of *I’m Your Man Ltd*\(^9\) which concerned a temporary permission, on which no condition had been imposed requiring cessation of the use at the end of the relevant period. It was held that there was no express or implied power to impose limitations on a permission granted otherwise than by a development order. Failure to impose a condition limiting the planning permission to a temporary period could not be implied, but should be explicitly expressed.

25. The application of *I’m Your Man* in the *Cotswold Grange Country Park*\(^10\) case was in relation to the numbers of caravans permitted and in response to the submission that ‘every grant would have to set out every limitation the planning authority wished to impose on the use of the relevant land’ Mr Justice Hickinbottom said ‘... that is not so. If a material change of use is proposed, then planning permission will be required. If a change is not material, then it is open to an authority to restrict the use within the prescribed development as described in the grant; but following *I’m Your Man*, only by way of condition’.\(^11\)

26. This latter point is also considered in the *Forest of Dean District Council*\(^12\) case where it was said that "There was a significant difference in terms of enforcement as between those two methods of restricting a permission. In the case of a permission limited by the description of development, the use of the land could be changed without any breach of planning control so long as the change was not material. But in the case of a permission subject to a condition, a change of use in breach of the condition could be a breach of planning control whether or not the change of use was material”.

27. In this case the descriptions of the development permitted are clear and unambiguous, that is, ‘retain existing caravan site (Area “A” on the submitted plan) for 45 static holiday caravans and 10 touring caravans’ in the 1979 permission and ‘to replace and re-site static holiday caravans in Area A’ in the 2011 permission. There are no conditions limiting or restricting the caravan site use and although both relevant planning permissions refer to ‘static holiday caravans’, taking into account the relevant authorities I am satisfied that the lawful use of the appeal site is as described, that is, ‘a caravan site for 45 static holiday caravans and 10 touring caravans’ with no restricting conditions. Any change of use would therefore only require planning permission if it was material, which is a matter I will consider below.

*The materiality of the change of use from static holiday caravan to permanent residential occupation*

28. The making of a material change in the use of any building or other land is development as provided for by s.55(1) of the 1990 Act. There is no further definition in the Act but it has been established that what constitutes a material change of use in individual cases involves a significant element of subjective judgement and is regarded as a matter of fact and degree. It has also been established that there are certain tools of analysis such as the change need not be a change to a different kind of use altogether before it may be regarded as material and that changes in the character of a use may suffice and a material change may occur where an existing use is intensified so that although the

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\(^9\) Document 7  
\(^10\) Document 5  
\(^11\) Paragraph 31 of Document 7  
\(^12\) Document D
same description may still be applied to it, it has undergone a change in character. In particular in *I’m Your Man* says that a ‘change of use is from one use or non-use to another use and should be considered in the terms of the character of the use of the land. Materiality for the purposes of s.55(1) of the Act should be judged as a matter of degree on a comparison between the use before and after the change ... the character of a use would not alter whether it was [temporary] or permanent’.

**On-site effects**

29. There is no dispute that, in the past, the appeal site and the static caravans were used for holiday accommodation. In 2011 the then Inspector was told that ‘the Appellant is not seeking in this appeal to obtain a change of use of the site from holiday to residential use’ and on this basis the Inspector did not impose a condition restricting the use because ‘if such a change of use were to be proposed at a later date, the Council would be made aware of it and the matter would be dealt with appropriately.’ It is now apparent that the information given to the Inspector was not correct in that at that time there was permanent residential use of some of the static caravans.

30. Aerial photographs of the appeal site up to 2009 show a mainly wooded area with glimpses of caravans between the tree cover. Photographs taken by the Council in November 2009 show caravans in a wooded and largely undeveloped setting with little evidence of such things as hard-surfacing, domestic paraphernalia, enclosure of plots, individualisation of plots or huts and sheds. Mr Harrison, who lives close to the appeal site and who was associated with it for many years up to 2006/2007, did not have any specific analysis but it was his evidence that occupancy levels were low from March to April and from September to October and that at its peak there was about 80% occupancy. The rules at that time were that there should be no occupation for longer than 28 days. Also, at that time there was a planning condition that no more than 12 caravans could be stationed on the site between 1 November and 15 March and Mr Harrison said that this was enforced and water and electricity were switched off.

31. Although defined as caravans, the caravans that are now on the site are very different in appearance from those present in 2009. Most are twin units and some have extensions and conservatories. They are in different styles and designs and are in different colours. Most have structures in their enclosed plots such as decking on which to sit, huts, sheds and barbecues. Each plot has been individually planted and landscaped and the method and material of enclosure of each plot is different ranging from fencing to brick walls. There is also a great variety in type and a significant amount of hardsurfacing throughout the site and on each plot and most of the trees have been removed.

32. There was a distinct difference in character and appearance between those caravans and their plots that were in permanent residential occupation and No 3 Rose Court which was in use as holiday accommodation. Although the latter was a twin unit and it had a separate decked area there was no domestic

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13 The Encyclopedia of Planning Law and Practice paragraph P55.33
14 Paragraph 34 of the 2011 appeal decision – Appendix 9.4 to Mr Boyt’s proof
15 Appendix 19.1 of Mr Boyt’s proof
16 Ref 6/75/644 condition 5 – Appendix 4.1 to Mr Boyt’s proof
paraphernalia on the plot and the area around the caravan was predominantly grass and was not ‘landscaped’ or planted.

33. The standard of holiday accommodation obviously varies in such matters as location, cost and the facilities provided but a person renting holiday accommodation, depending on those various matters, could expect a standard of accommodation equivalent to permanent residential occupation. Such accommodation could have for instance, a barbecue, an outbuilding for bikes, a dedicated parking space, washing and drying facilities for clothes, an appropriately furnished outside sitting area and a pleasant outlook onto a landscaped garden. In these respects there would be no difference between holiday and permanent residential use.

34. With a holiday accommodation use the occupiers of the caravans would change periodically or be limited to weekends and/or other holiday periods in the case of owner/occupiers who used the caravans as holiday homes, but the use of the caravan by people on holiday for whatever length of time for sleeping, preparing and eating meals, relaxing and other activities associated with any type of residential use would be no different from use by permanent residents. The only difference may be that holiday makers would not, in all probability, do gardening or other chores or maintenance associated with permanent residential use.

35. On a site such as the appeal site, which is some distance from towns/villages with services and facilities, anyone on holiday would be likely to have their own transport. The use of areas close to each caravan for parking vehicles would be no different whether the vehicle belonged to a person on holiday or to a permanent resident. In this respect I note that the caravan site licence allows only one car to be parked between adjoining caravans provided that the door to the caravan is not obstructed. And the Park Rules say that only one parking space per holiday home has been provided and that occupiers with more than one vehicle and visitors should, in effect, park in the visitors’ car park or on the pitch so long as there is compliance with the site licence and fire safety requirements. At the time of my visit I noted some plots had more than one car parked, but there did not appear to be any contravention of the site licence.

36. People on holiday would go out for social and leisure activities and to buy food and supplies. The Appellant has provided a residents’ traffic survey and although this is for one week only in July 2015 the picture that emerges is one of limited vehicular movements for similar activities. There are some exceptions, with some residents recording trips for work and visits for health appointments, but these are not extensive or significant.

37. The Clanna appeal considered vehicular trips made by holiday makers for recreational and shopping purposes and trips by permanent residents to and from places of work and visits from friends to them and the Inspector took the view that on balance whilst there would be some increase in the overall number of vehicle movements associated with any given residential unit and some changes in the purpose of the trips he did not think that ‘the basic scale

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17 Document 4 clause 30
18 Document 2 clause 15
19 Appendix 2 to Mr Eiser’s proof
20 Appendix 6 to Mr Eiser’s proof
and character of the trip generation associated with the land would have changed’ and from the evidence in this case I have no reason to reach a different conclusion.

Off-site effects

38. The appeal site is in close proximity to designated Sites of Special Scientific Interest, Special Protection Areas, Special Areas of Conservation and Ramsar and Natural England’s view is that, although the impact of the change of use at the appeal site taken alone is small there are risks of harm to these designated nature conservation sites. Whilst I accept that permanent residents of the appeal site may visit the designated sites for activities such as walking, exercising dogs, mountain biking over the whole of the year on a regular basis, these are also activities that could be undertaken by people on holiday. The cumulative impacts of these activities would be the same whether undertaken by permanent residents in the area or holiday visitors.

39. The responses to the planning contravention notices show that nearly all of the current residents of the site have registered with a local doctor and the traffic survey indicates that there were trips to the doctor, hospital and dentist averaging out at one visit per fortnight per caravan. There is no evidence that the health service demand has had any adverse effect, or indeed any effect whatsoever. There is no evidence relating to holiday use of the health services in the area but it could be possible that someone on holiday had to visit the local hospital or doctor for an emergency. I do not consider that any change, if indeed there is, is material.

Conclusion on materiality

40. I therefore conclude that the change of the use of the static caravans from holiday use to permanent residential use does not, on the evidence before me, amount to the making of a material change of use that requires planning permission.

Overall conclusion

41. My conclusions above lead me to allow the appeal but, as referred to above, it is necessary to look again at the description of the development that was applied for. The evidence shows that 36 caravans are in permanent residential occupation and there is no evidence that that they are all occupied by people aged over 45. There is no need for any reference to planning conditions or the planning permission. These matters were raised at the Inquiry and there was no opposition to them by either Party. In the circumstances I will modify the description of the LDC.

42. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a LDC, described in the following revised terms, ‘existing use of 36 static caravans within the land edged red on the attached plan for permanent residential occupation’ 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.

Decision

43. The appeal is allowed and attached to this decision is a LDC describing the existing use, that is, the existing use of 36 static caravans at Organford
Country Manor Park within the land edged red on the plan attached to the LDC for permanent residential occupation, which is considered to be lawful.

*Gloria McFarlane*

Inspector
APPEARANCES

FOR THE APPELLANT

Mr T Jones                  Counsel
He called
Mr B Eiser                 Director, EJ Planning Ltd
BSc(Hons) MA PGDip MRRTPI

FOR THE LOCAL PLANNING AUTHORITY

Miss E Dring               Counsel
She called
Mr S Boyt                  Principal Planning Officer
MA(TP) MRRTPI

INTERESTED PERSONS

Mr P Harrison              Local resident
Mr R Forward               Resident of the appeal site
Mrs M Turner               Owner of a caravan on the appeal site
Mr D Patterson             Resident of the appeal site

DOCUMENTS SUBMITTED AT THE INQUIRY BY THE APPELLANT

Document 1 - Amended and agreed plan of the red line area
Document 2 - The Park Rules
Document 3 - Licence agreement for caravan holiday home
Document 4 - Caravan site licence and schedule B
Document 6 - R v Ashford BC ex parte Shepway DC [1999] PLCR 12
Document 7 – I’m Your Man Limited v SSE [1999] 77 P&CR
Document 8 – The Queen oao Mr S A D Reid and S A D Reid Motors v SSTLGR and Mid-Bedfordshire DC [2002] EWHC 2174 (Admin)
Document 9 – Burdle and another v SSE and another [1972] 1 WLR 1207
Document 10 – Smith v FSS [2006] JPL 386
Document 11 – Closing submissions on behalf of the Appellant

DOCUMENTS SUBMITTED AT THE INQUIRY BY THE COUNCIL

Document A - Letters of notification and list of persons notified
Document B - Opening statement on behalf of the LPA
Document C - Plan attached to LDC Ref 6/2009/0591
Document D – Forest of Dean DC v DDE and another [1995] JPL 937
Document E – Boddington v British Transport Police [1999] 2 AC 143
Document F – Extract from Wild Purbeck NIA Visitor Survey Analysis
Document G – Closing statement on behalf of the LPA
**Lawful Development Certificate**

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

**IT IS HEREBY CERTIFIED** that on 7 July 2014 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing use of 36 static caravans within the land edged red on the attached plan for permanent residential occupation does not amount to the making of a material change in the use of the land that would require planning permission.

_Gloria McFarlane_
Inspector

Date: 11.09.2015
Reference: APP/B1225/X/15/3002181

**First Schedule**

The existing use of 36 static caravans within the land edged red on the attached plan for permanent residential occupation.

**Second Schedule**

Land at Organford Manor Country Park, Organford, Poole, Dorset, BH16 6ES
NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.
Plan

This is the plan referred to in the Lawful Development Certificate dated: 11.09.2015

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

Land at: Organford Manor Country Park, Organford, Poole, Dorset, BH16 6ES

Reference: APP/B1225/X/15/3002181

Scale: Not to scale