
Site Address:	Land adjacent to Weststar Hayling Island Holiday Park, Manor Road, Hayling Island, PO11 0QS		
Proposal:	Certificate of Lawfulness for the use of adjacent land to the holiday park for recreation purposes ancillary to caravan site		
Application Type:	Certificate of Lawfulness		
Application No:	APP/22/01096	Expiry Date:	19/01/2023
Applicant:			
Agent:	Mr D Hancock	Case Officer:	Joseph Toole
Ward:	Hayling West		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

- 1.1 The site address is a caravan holiday park located in the south west of Hayling Island.
- 1.2 The main access point to the site is from Manor Road. The site is situated outside the settlement policy with residential housing to the west and north and open land to the east.
- 1.3 The land is question in to the south and east of the caravan holiday park. The site contains mature trees and hedges particularly along the side.
- 1.4 The site is close to many significant natural and historic heritage assets however it is covered by none of them. The closest assets are listed buildings which surround the site. Those are the Grade II Listed: Flint Cottage adjacent the site to the north west; Newton House Hotel adjacent the site to the south west; Farm Cottage and Rook Farmhouse adjacent the site to the south east; and, the Grade II* Church of St Mary adjacent to the site at the north east.
- 1.5 The majority of the site is within Flood Zone 1 with the exception of the top north-east section being within Flood Zone 2/3.

2 Planning History

HWU/01238 – the use of the land to the south of the existing camping site at Higworth Farm, Manor Road, Hayling Island. Approved 11th December 1950.

13218 – the use of the land at Higworth Farm Caravan Site, Manor Road, Hayling Island as a games and recreation area. Approved 16th March 1961.

15380/13 – use of land as northern extension to Higworth Caravan park (as amended by supplementary drawing received on (11th March, 1980), Higworth Lane, Hayling Island. Approved 22nd May 1980.

89/52816/1 – siting of mobile home for year-round occupation, Higworth Holiday Home Park, Manor Road, Hayling Island. Approved 21st September 1989.

95/52816/4 – use of land for additional 2 months per annum November and December so allowing use of Caravan park for 10 months instead of the existing 8 months, Higworth Caravan Park, Manor Road, Hayling Island. Approved 31st July 2001.

07/52816/011 – change of use of recreation area to accommodate 22 static caravans. New recreation area, Weststar, Hayling Island Holiday Park, Manor Road,

Hayling Island Po11 0QS. Approved 13th June 2007.

3 Proposal

- 3.1 The applicant has submitted various information in support of a lawful development certificate (LDC) application in an effort to show the land in question has been used for recreational purposes for more than 10 years. In addition it is claimed the land in question is within the sole ownership of Hayling Island Holiday Park.
- 3.2 The application is made under Section 191 of the Town and Country Planning Act 1990 as amended and relates to the lawfulness of an existing use. The applicant claims that the use began more than 10 years before the date of this application.
- 3.3 Originally the Lawful Development Certificate incorporated parking ancillary to the Caravan Site. This was included in error and subsequently removed from the application.

4 Statutory and Non Statutory Consultations

Arboriculturalist

No Comment.

Conservation Officer

I have reviewed this application and confirm that there are no heritage objections to the use of the adjacent land to the holiday park for recreation purposes ancillary to the caravan site.

Councillor Brenda Linger - Hayling West

No Comment.

Councillor Clare Satchwell - Hayling West

No Comment.

Councillor Julie Richardson

No Comment.

County Waste Management

No Comment.

Engineering/Drainage

No Comment.

Environment Agency

There is a small section of flood zone 3 within the red line boundary therefore we would recommend that a flood risk assessment is submitted to this application.

Environmental Health Manager, Community Group

I have reviewed the above application and relevant details. I can advise that the Pollution Team have no adverse comments in relation to noise and nuisance matters.

Historic England

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

Planning Policy

It is noted that a small area in the north east of the site is at risk for flooding. However, since the application appears to relate only to use of the land for informal recreation purposes, and no built development has taken place or is proposed in this area, the policy team has no comments to add.

Property Management (formerly County Estates Department) Hampshire County Council

No Comment.

5 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: At least one site notice exists - check the number.

Statutory advertisement: Not applicable.

Number of representations received: 3

Comment	Officer Comment
Evidence of recreation being a football pitch from 2011 image.	Supportive of the recreational use
Parking Matters	This has now been removed from the application
Waste Dumping with environmental breaches	Regard cannot be given to any objections to this application on planning grounds.
Removal of hedging against environmental planning	
Existing waste cleared away	

6 Legal Considerations

6.1 The onus of proof in an LDC application is firmly on the applicant, however, an LPA should always cooperate with an applicant seeking information they may hold about the planning status of land.

6.2 The Governments Planning Practice Guidance (PPG) states that: 'In the case of applications for existing use, if a local planning authority has no evidence itself, nor from others, to contradict or otherwise make the applicants version of events less than

probable, there is no good reason to refuse the application provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.

6.3 In order to grant a Certificate of Lawfulness for the use of the application site for an ancillary use, the Local Planning Authority must first be satisfied as to the planning unit: that the primary use is lawful i.e. that of a caravan site; and then consider the lawfulness of the ancillary recreation use on the evidence provided. The test is the balance of probability over an unbroken period of 10 years.

6.4 Advice has been obtained with regards to this application, setting out the legal position, which is the test set out above.

(i) The quality of the available evidence

6.5 Evidence Provided by the Applicant:

Aerial Imagery from 2004, 2005, 2007, 2011, 2015, 2019 and 2022
Statutory Declarations from Charlie Rolfe (Bar Supervisor)
Statutory Declarations from Diane Doyle (Resident)
Statutory Declarations from Emily-Jane Hunt (Resident)
Statutory Declarations from Janice Smith (Resident)
Statutory Declarations from Julie Devereux (Resident)
Statutory Declarations from Kim Bishop (Assistant Accommodation Manager)
Statutory Declarations from Kim Tombs (Admin Manager)
Statutory Declarations from Mary Dixon (Resident)
Statutory Declarations from Neil Devereux (Resident)
Statutory Declarations from Philip Hubbard (Personal Knowledge)
Statutory Declarations from Stephanie Hubbard (Personal Knowledge)

There are another 19 statutory declarations which do not cover the last full 10 year period. Whilst this does not confirm the use for the 10 year period it does show evidence the site has been used for recreational purposes during that time.

6.6 LPA evidence

On case file

- Google earth imagery dated 2005 - 2022.
- Planning history

7 Legal & Determination

7.1 The supporting information provided by the applicants agent includes aerial imagery and statutory declarations from employees and residents, to which due weight has been given and are deemed sufficient to make their versions of events more than probable. The authority has no evidence itself, nor from others to contradict the applicants evidence. Therefore, the grant of a certificate can be justified on the balance of probability.

7.2 The planning history provided shows the application area is within the same overall ownership area. Whilst the planning history has changed over time, it shows the application site has been used in connection with the caravan site.

7.3 With regards to assessing what makes up a planning unit the most commonly referred to test is *Burdle v Secretary of State for the Environment (1972) 1 WLR 1207*. In summary, the court decision stated that the starting point for any assessment of identifying the planning unit is normally ownership or area of occupation, unless and until some smaller scale unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. Whilst there are some physical separation from the caravan site due to vegetation surrounding the site, on to the evidence provided it is considered on the balance of probability that there is a physical and functional link with the caravan site and the application site, which forms the planning unit, upon which the application is determined.

7.4 Under planning application reference 07/52816/011, planning permission was granted for a new recreation area, which was for a small section of the site, currently being considered. Therefore, this part of the land can be legally determined as recreation use due to the planning permission.

7.5 There has been third-party responses on the application claiming the site can be accessed by members of the public not in association with the caravan site. It is worth noting there is a Public Right of Way through the site which makes this difficult to control. There are signs placed around the site which states it is private land not for public use. Therefore, on the balance of probability the recreation site is part of the caravan site.

7.6 It is not possible to certify an ancillary use for a certificate of lawfulness unless the primary use is lawful, which is considered to be the case due to planning history records and other evidence showing the land in question has been used as a caravan site in excess of 10 years. Based on the evidence provided, the ancillary recreational use to the caravan site is lawful, which is not a use in its own right.

8 Conclusion

8.1 The evidence provided by the applicant's agent in support of the application and the Council's own records, is sufficient to justify the grant of a lawful Development Certificate for an existing use of the land for ancillary recreational purposes on the balance of probability.

8.2 Therefore, a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/01096

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of Lawfulness of Existing Use or Development for the use of adjacent land to the holiday park for ancillary recreation purposes to the caravan site as described in the written particulars, plans and other documents submitted with your application received on 14 November 2022.

SECOND SCHEDULE:

This certificate relates to land at Land adjacent to Weststar Hayling Island Holiday Park, Manor Road, Hayling Island, PO11 0QS as shown edged red on the submitted Location Plan received 14 November 2022.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.