

The background image shows a coastal landscape. In the foreground, there is a green grassy field with a wooden fence running across it. To the right, a portion of a light-colored building with a chimney and a window is visible. In the distance, there are blue cliffs and the sea under a clear blue sky.

laister

PARTNERS IN PLANNING

Country and Coastal Parks 2 Limited

Certificate of Lawful Development

Hayling Island Holiday Park, Hayling Island,
PO11 0QS

Planning Supporting Statement

Application under Section 192 of the Town and Country Planning Act 1990 for 'Confirmation that the repositioning of 65 Static Caravans from Land benefitting from consent reference 95/52816/4 and 07/52816/011, onto Land benefitting from consent reference APP/23/00769, would not result in a material change of use of the caravan site'.

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Version: [dv1]

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1. Introduction

- 1.1. Laister Planning Limited has been instructed by our client Country and Coastal Parks 2 Limited to prepare an application under Section 192 of the Town and Country Planning Act 1990 (the TCPA, as amended), for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) for *"Confirmation that the repositioning of 65 Static Caravans from Land benefitting from consent reference 95/52816/4 and 07/52816/011, onto Land benefitting from consent reference APP/23/00769, would not result in a material change of use of the caravan site"*, at Hayling Island Holiday Park, Hayling Island, PO11 0QS.
- 1.2. In accordance with national and local validation requirements, the application is supported by the following information:
 - This Supporting Statement;
 - Application Forms, duly completed;
 - Site Location Plan (drawing reference: 8762 – G, **Appendix 1**); and
 - Planning Application Fee Paid Under a separate Cover (£231)
- 1.3. The Local Planning Authority (LPA, or Council) for the site is Havant Borough Council.

Site and Surroundings

- 1.4. Hayling Island Holiday Park contains the application site and a large area of land in use as a caravan site and land used for recreation purposes and parking ancillary to the caravan site. The wider site contains mature trees and hedges particularly along the perimeter, providing the site with a palpable defining border. The caravan site presently occupies 443 static caravans, and an amenity building.
- 1.5. The caravan site is located approximately 500m north of West Town. It is accessed off Manor Road which feeds into the A3023 to the surrounding settlements and off the island. West Town provides access to a range of services, facilities and amenities including shops, eating and drinking establishments, sport and recreation area, medical and dental practices, pharmacy, and education facilities.
- 1.6. The application site is adjacent to the existing Hayling Island Holiday Park, on the eastern and southern side forming an irregular shape, and measuring approximately 36.77 acres. The application area is defined as the area contained within the red line on the accompanying Site Location Plan, enclosed at **Appendix 1**. The application site is within the same ownership and planning unit as the Holiday Park.
- 1.7. A Public Right of Way (PRoW) cuts through the caravan site and can be found at the north and south of the developed area. 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 (Historic England reference 1303499) adjacent to the site at the north west; Newton House Hotel (Historic England reference 1340209) adjacent to the site to the south west; Farm Cottage and Rook Farmhouse (Historic England reference 1390663) adjacent to the site to the



south east; and, the Grade II* Church of St Mary (Historic England reference 1091616) adjacent to the site at the north east. There are no other historic or natural assets at the site.

- 1.8. The Solent Maritime Special Area of Conservation can be found in the water at the south of the island at a distance of approximately 1km. The Chichester Harbour AONB can be found at a distance of approximately 600m to the east. The Chichester and Langstone Ramsar Site, SSSI and Special Protection area can be found at a distance of 700m to the west. The Hayling Billy Local Nature Reserve is approximately 1.37km to the north.
- 1.9. According to the Environment Agency flood risk map, the site is fully situated within Flood Zone 1.



2. Definitions and Guidance

Purpose of an Application Under Section 192 of the Planning Act

- 2.1. Planning Practice Guidance (PPG) on Lawful Development Certificates explains the process for obtaining a Certificate of Lawfulness of Proposed Use or Development (CLOPUD). The PPG advises that a LPA can grant a certificate confirming that a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.
- 2.2. The guidance advises:

“Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun”.
- 2.3. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required”
- 2.4. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate”
- 2.5. The PPG goes on to advise,

“In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved’. ‘A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. ‘In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

Definition of a "Caravan Site" and "Caravan"

- 2.6. The House of Lords decision in 'Wyre Forest 1990' (Wyre Forest District Council and SoS and Other, 1990 [2 A.C. 357]), dealt with a permission for the use of land as a caravan site in which the council objected. The case considered the definition of a 'caravan site' and a



'caravan' and examined a case of whether a chalet was a 'caravan'.

2.7. Bridge L.J. states at Page 368, Part F:

"My Lords, I have to say that none of the foregoing observations dissuade me from the view that the terms 'caravan' and 'caravan site', when used at any time since DDay [being the commencement of the Caravan Sites and Control of Development Act 1960, which defined both terms in statute] in any formal document under the Planning Acts, prima facie have the meaning which they are given by the Act of 1960 as amended."

2.8. The case was allowed with the Council paying the appellant's costs. Therefore, the definition of a 'caravan site' and a 'caravan' are as set out in the 'Caravan Sites and Control of Development Act 1960' ('the 1960 Act').

Caravan Site

2.9. Section 1(4) of the 1960 Act provides the definition of a 'caravan site' as follows:

"the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed"

2.10. Planning control adopts the same definition arising from the 1960 Act, as set out in Section 336 (Interpretation) of the Town and Country Planning Act 1990 (the '1990 Act', as amended). Section 336 of the 1990 Act states:

"In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the Planning (Consequential Provisions) Act 1990, 'caravan site' has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960'.

2.11. A 'caravan site' is statutorily defined in both planning and licensing terms. There are elements of caravan site which are used for the stationing of caravans, and areas which are used for ancillary purposes such as the roadways, private garden areas, service areas, car parking, open space and recreation areas, storage, caravan sales, etc.

Caravan

2.12. Section 29 of the 1960 Act provides the definition of a 'caravan' as follows:

"caravan" means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—

(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

(b) any tent'

2.13. The definition of a 'caravan' in section 29 above was amended by section 13 of the 'Caravan Sites Act 1968' (the 1968 Act) to cover 'Twin-unit caravans'. Section 13 of the 1968



Act was amended by 'The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006'. The definition of a 'caravan' is now therefore as follows:

(1) A structure designed or adapted for human habitation which—

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)

shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—

(a) length (exclusive of any drawbar): 65.616 feet (20 metres);

(b) width: 22.309 feet (6.8 metres);

(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10.006 feet (3.05 metres).

- 2.14. For planning purposes, both the Town and Country Planning Act 1990 (the '1990 Act', as amended), and The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the 'GPDO') each adopt this singular definition of a caravan.
- 2.15. The definition within the 1960 Act includes all types of caravans as being the same and interchangeable, including touring caravans and static caravans.
- 2.16. Therefore, a consent for the siting of caravans is a use of land, and not in itself operational development. Unless restricted or controlled by condition, caravans can normally be sited anywhere within an area covered by a planning permission. The layout of a site; the caravan types that can be sited there; and the maximum numbers of caravans that can be sited, can only be restricted by condition.

Interrelationship Between Planning and Licensing Caravan Sites

- 2.17. A dual control system exists between the 1990 Planning Act and the 1960 Caravan Act. The conventional differentiation applied is that planning permissions should be issued mainly on the basis of the principle of the use of the land as a caravan site and its external effects, and that site licences should be concerned with internal arrangements of the caravan site which affect only the users of the site and are primarily concerned with health and safety.



- 2.18. The licensing process, using model standards, would normally dictate the precise layout and spacing of individual caravans; the requirement for infrastructure, ancillary development; and other features of the caravan site.
- 2.19. Schedule 2, Part 5 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015, as amended) covers permitted development at caravan sites and recreational campsites. Class A covers use of land as a caravan site and, 'The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2' is permitted development. Class B covers 'development on caravan site required by conditions'. The following is permitted development:

"Development required by the conditions of a site licence for the time being in force under the 1960 Act".

- 2.20. Under normal circumstances, the roads, paths, hardstandings and other necessary infrastructure (including the laying out of recreational space) are covered by the site licence and would be permitted development should the site licencing require such features. Planning considerations should therefore only relate to the use of the land for the intended purpose (in this case, being the siting of caravans), and not make any assessment of any operational development that would accompany the development.



3. Planning History

- 3.1. For the avoidance of any doubt, the planning history for all the land within the same ownership area (which we shall demonstrate is a single planning unit in the section below) is set out in this section.
- 3.2. The Council's online public access facility provides information on planning history dating back to approximately 1995. A brief review illuminated that many important documents were missing, and the site clearly had a history prior to the 1990s. A technical officer provided the full planning history and the relevant decision notices and location plans. The site's first recorded planning permission was granted in 1950. The most recent consent was issued in 2023.

Planning Reference: HWU/01238

- 3.3. In 1950, the "Extension of the existing camping site" was granted under reference HWU/01238. With the description of development setting out the proposal was for an extension to an existing site, it strongly suggests that other adjacent land was already in use as a camping site. This is confirmed by the accompanying location plan, shown below. The location plan illustrates the application site within the red line, and the remainder of the land within the same ownership within the blue line. The land within the blue line is identified as the "Existing Site".

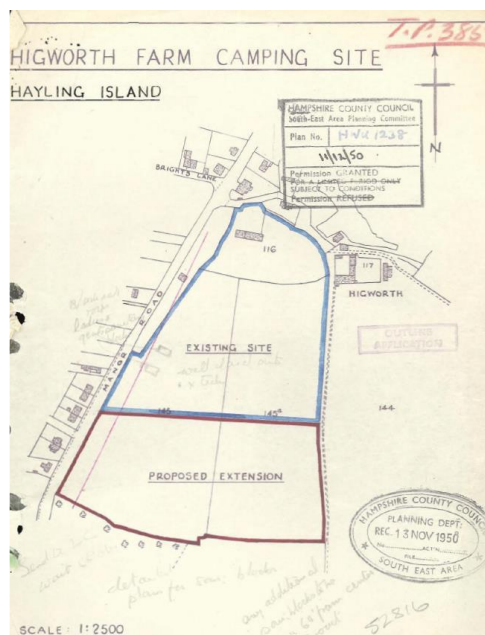


Figure 1 - HWU/01238 Location Plan Extract

- 3.4. This permission, which seems to have been in outline, was subject to a total of 4no. planning conditions.

Planning Reference: 13218

- 3.5. In 1961, permission reference 13218 was granted enabling "The use of land as a games and recreation area". The location plan, an extract of which is shown below, demonstrates the play area in a red line.



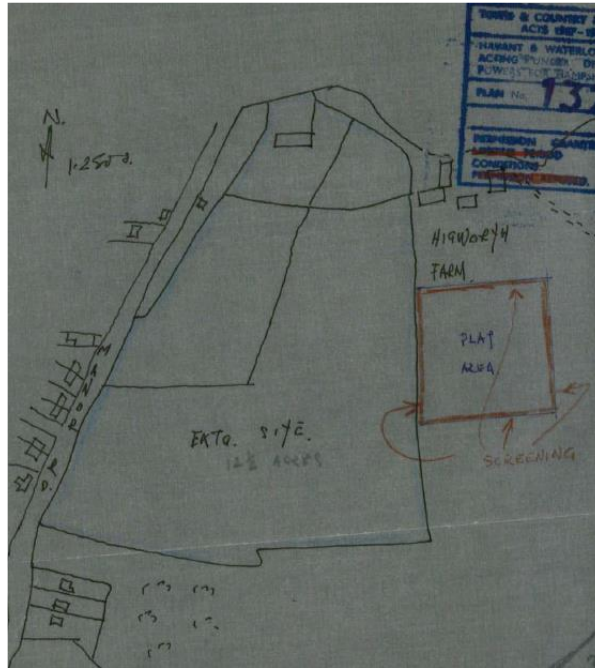


Figure 2 13218 Location Plan Extract

Planning Reference: 15380/13

- 3.6. The decision notice for application reference 15380/13 reveals it was granted in 1980 for *"Use of land as northern extension to Highworth Caravan Park (as amended by supplementary drawing received on 11th March 1980)"*. A location plan for this permission has not been provided.
- 3.7. Without a location plan it is impossible to be certain what land benefits from this permission. However, the description suggests it is a parcel of land at the north of the site, and in the next planning permission (1989) we will see a new section at the northeast.

Permission Reference: 89/52816/1

- 3.8. In 1989, permission reference 89/52816/1 was granted enabling *"Siting of mobile home for year round occupation"*. An extract of the location plan is shown below.

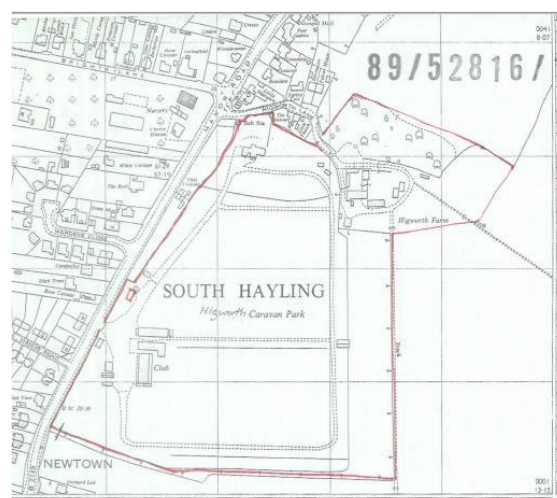


Figure 3 89/52816/1 Location Plan Extract



- 3.9. There is a second red line area shaped like a rectangle at the centre western area of the large red line. It appears this rectangular area is the land meant to benefit from this permission, as the description and an accompanying condition (condition 2) appear to refer to a single mobile home, and not many.
- 3.10. The permission is accompanied by a total of two planning conditions and it appears the purpose of this application was to enable the use of a mobile home (caravan) for a warden/manager for year-round residential use.
- 3.11. The permission supersedes consent reference 13218 and HWU/01238 that came before it.

Permission Reference: 95/52816/4

- 3.12. In 2001, permission reference 95/52816/4 was granted enabling *"Use of land for additional 2 months per annum November and December so allowing use of caravan park for 10 months instead of 8 months"*.
- 3.13. The permission's location plan, shown below, illustrates the developed area within the red line, and the application site subject to this application within that blue line.

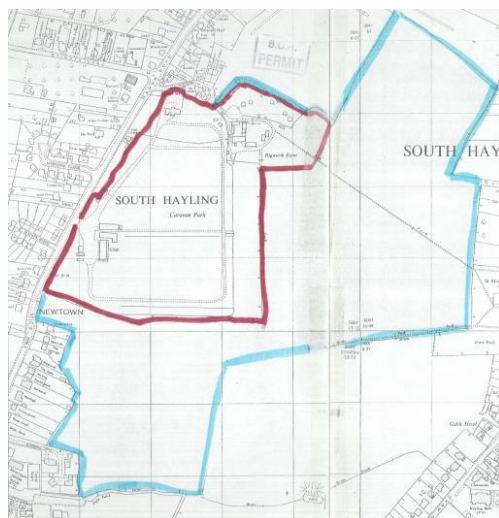


Figure 4 95/52816/4 Location Plan Extract

Permission Reference 07/52816/011

- 3.14. In 2007, permission reference 07/52816/011 was granted enabling *"Change of use of recreation area to accommodate 22 static caravans. New recreation area"*.





Figure 5 07/52816/011 Location Plan Extract

Planning Reference APP/22/01096

- 3.15. In February 2023, a certificate of lawful existing use or development was granted under reference APP/22/01096 for:

"The use of adjacent land to the holiday park for recreation purposes and parking ancillary to caravan site as described in the written particulars, plans and other documents submitted with your application received on 14 November 2022"

- 3.16. An extract of the location plan is shown below:

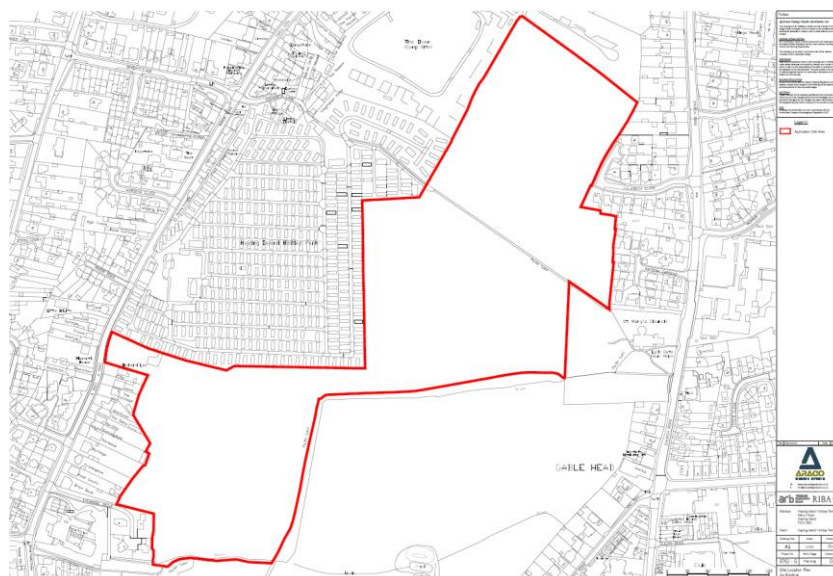


Figure 6 APP/22/01096 Location Plan Extract

Planning Reference APP/23/00769

- 3.17. On the 5th January 2024, a certificate of lawful proposed use or development was granted for the following description:

"The stationing of 112No. static caravans for occupation (other than warden accommodation) between 1 March and 31 December in any calendar year as described in the written particulars, plans and other documents submitted with your application received on the 8th September 2023".



- 3.18. An extract of the location plan is shown below, which mirrors the application area benefitting from the CLEUD.
- 3.19. This consent confirmed that 112 static caravans could be stationed on the location plan associated with the application, and that 559 static caravans could be sited across the planning unit as a whole (as described in the written particulars).
- 3.20. There are no other known consents and there is no known enforcement matter at the application site.



4. The Planning Unit

- 4.1. Turning back to defining the planning unit, it is necessary to define the relevant unit to which the lawful proposed use relates. The Development Control Practice encyclopaedia provides some useful information with regard to defining a planning unit. It acknowledges that the concept of the planning unit is one that continues to cause considerable practice difficulty, because the courts are insistent that each case is to be considered on its merits as matters of fact and degree. As section 4.324 states:

“The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned, normally the whole of the area in the same ownership or the same occupation. But the consequence of applying that as a universal rule is that the larger the unit of ownership or occupation, the less likely is a change in the use of part of it liable to constitute a material change in the whole.

It is only normally possible to select a smaller unit in the same occupation where there is a functional and physical separation of activity. Both functional and physical separation are required before a smaller unit can be identified, since without functional separation the ancillary link remains and without physical separation there is no smaller physical area which can be identified as a separate unit.

With regard to the subdivision of the planning unit a material change of use does not occur automatically. The primary use of the new units may remain the same as the former primary use of the whole. But the subdivision may have the effect of changing the character of the use and may have planning consequences which indicate that a material change has occurred. In summary a planning unit is the area of land which is to be looked at in order to assess what planning rights apply to all or part of that area.”

- 4.2. Relevant guidance is provided by case law. In *Burdle v Secretary of State for the Environment and another* [1972] 1 WLR 1207, it was held:

“What, then are to be considered the appropriate criteria to determine the planning unit which should be considered in deciding whether there has been a material change of use? Without presuming to propound exhaustive tests apt to cover every situation, it may be helpful to sketch out broad categories of distinction.

*First, whenever it is possible to recognise a single main purpose of the occupiers use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from *G. Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 WLR 506, where Diplock LJ said at p.513:*

“What is the unit which the local authority are entitled to look at and deal within an enforcement notice for the purposes of determining whether or



not there has been a 'material change in the use of any buildings or land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."

But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its ancillary activities) ought to be considered as a separate planning unit.

To decide which of these three categories apply to the circumstances of any particular case at any given time may be difficult. Like the question of material change of use, it must be a question of fact and degree. There may indeed be an almost imperceptible change from one category to another. Thus, for example, activities initially incidental to the main use of an area of land may grow in scale to a point where they convert the single use to a composite use and produce a material change of use of the whole. Again, activities once properly regarded as incidental to another use or as part of a composite use may be so intensified in scale and physically concentrated in a recognisable separate area that they produce a new planning unit of which the material has changed. It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, 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.

- 4.3. Using the *Burdle* tests and its 'useful working rule' the starting point is whether the site has a single main purpose, and if so, the correct planning unit is the unit of occupation.
- 4.4. In this case, the Council has already issued: consent references 95/52816/4 (caravan park) and 07/52816/011 (static caravans); a CLEUD (under CLEUD consent ref: APP/22/01096) for "recreation purposes and parking ancillary to caravan site"; and a CLOPUD (under CLOPUD consent ref: APP/23/00769) which confirms the stationing of an additional 112 caravans would be lawful, bring the total maximum number of caravans in the planning unit to 559, at "Hayling Island Holiday Park, Manor Road, Hayling Island, PO11 0QS". These consents confirm the use of the land subject to this application is a caravan site with express consent for up to 559 caravans.
- 4.5. The first scenario of the *Burdle* decision therefore applies, in that the whole area of land forms part of the main planning unit (i.e. it is part of the caravan site). Where there is any



ancillary land, *Burdle* specifically references ancillary uses falling within the same planning unit as the primary use. The whole parcel of land within the same ownership is a single planning unit. There can be no question, on the basis of *Burdle*, that the application site falls within the planning unit of the caravan site.



5. Main Assessment

- 5.1. This Section sets out the Applicant's full case with respect to why the LDC should be issued.

The Proposed Development

- 5.2. This application seeks *"Confirmation that the repositioning of 65 Static Caravans from Land benefitting from consent reference 95/52816/4 and 07/52816/011, onto Land benefitting from consent reference APP/23/00769, would not result in a material change of use of the caravan site"*, at Hayling Island Holiday Park, Hayling Island, PO11 0QS
- 5.3. The Applicant proposes to reposition 65 static caravans (that fall within the 1960 Caravan Sites and Control of Development Act (as amended) definition of a caravan) within the application site in question, as identified in red on the submitted Site Location Plan (**Appendix 1**). A total of 65 static caravans are proposed to be repositioned from the land benefitting from consent reference 95/52816/4 and 07/52816/011 onto the land now benefitting from consent reference APP/23/00769. There will no increase in number across the planning unit site. The total number of caravans that would be stationed on the land benefitting from APP/23/00769 would increase from 112 to 177, however the total number of caravans that would be stationed on the planning unit will remain exactly the same at 559.
- 5.4. The purpose of this application is to improve the overall quality of the caravan site. The land benefitting from 95/52816/4 and 07/52816/011 is currently laid out very densely in a traditional holiday park layout. While every unit has direct access to a road and space to accommodate a parked vehicle, there is very little amenity space and the site's traditional layout is somewhat outdated by the modern demands of a holidaymaker. The proposed development will enable a redistribution of units and greenspace to provide a better holidaymaking place for occupiers of the caravan site.
- 5.5. For the avoidance of doubt, there is no proposed change to the occupation period/duration of any guest. The consent reference 95/52816/4 and 07/52816/011 and APP/23/00769 all share a condition or description with the purpose of limiting occupation to between 1st March and 31st December.
- 5.6. All units will fall continue to within the definition of 'caravans' as set out in the Caravan Sites and Control of Development Act 1960 (the 1960 Act, as amended), within the existing caravan site. As caravan sites are a use of land (a 'sui generis' use) and not operational development, the use of the site would not change with the proposed development; it would remain a caravan site falling under the relevant definition in the 1990 Act.

What is the Site's Primary Use?

- 5.7. In this case, the Council has already issued consent references: 95/52816/4; 07/52816/011; APP/22/01096; and, APP/23/00769. The planning unit has express consent for up to 559 static caravans.
- 5.8. The CLEUD consent (APP/22/01096) confirmed that the land subject to that application



was part of the planning unit of the caravan site and that it had been used ancillary to the caravan site for at least 10 years. The CLOPUD consent confirmed that a total of 112 static caravans could be stationed on the land identified in the location plan accompanying that application and that the total number of caravans that could be accommodated in the planning unit is 559. There can be no doubt that the land subject to this application is all part of a single planning unit (as established in the two recent LDC consents).

Whether the Proposed Development Amounts to Lawful Development

- 5.9. Through examination of the planning history, it is apparent that the application site has a lawful permitted use as a caravan site for the stationing of up to 559 static caravans.
- 5.10. Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in Section 55 of the Town and Country Planning Act 1990. The definition of 'development' includes building operations (e.g. structural alterations, construction, rebuilding, most demolition); material changes of use of land and buildings; and engineering operations (e.g. groundworks).
- 5.11. The basic tests to establish if a material change of use has occurred have been established by a number of court decisions, notably *East Barnet UDC v British Transport Commission* [1962] and *Palsar v Grinling* [1948].
- 5.12. The way that this question has been assessed has been clarified by the Court of Appeal in the case: *Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited* [2012] EWCA Civ 1473 (referred to as the 'Hertfordshire' case) (**Appendix 2**) and *Reed v SOS* [2014] (**Appendix 3**).

Hertfordshire v SoS 2012

- 5.13. In this case a Council was arguing that a material change of use had been caused by an intensification in the use of a scrapyards.
- 5.14. At arriving at their unanimous judgment to uphold an earlier decision of the High Court, the Lord Judges confirmed that any planning consequences arising from the proposed development must be seen within the context of a change in the on-site character.
- 5.15. On change in the character of the use, the court states at Paragraph 40:

"Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly...: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land."

- 5.16. The court considered the extent to which environmental effects can be taken into account in Paragraphs 41 and 42:

"41. I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change



of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyard because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land.

42. The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use."

- 5.17. It is clear, therefore, that the starting point in considering whether there has been a material change of use must not be the off-site effects. It is deciding whether there is a definable change in the character of the use itself.
- 5.18. Conversely, this case also examined the extent to which intensification alone can cause a material change of use. Justice Ousley adds at Paragraphs 43 and 44:

43....Although authorities, in the Court of Appeal for example in Fidler v the First Secretary of State [2004] EWCA Civ 1295 at paragraph 28, and earlier in, for example, Lilo Blum v the Secretary of State for the Environment [1987] JPL2 78 per Simon Brown J, treat the principle of a material change of use by intensification as well established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.

44. In Brooks and Burton Limited v the Secretary of State for the Environment [1977] 1 WLR 1294 , Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one."

- 5.19. It is clear therefore that the intensification of a site cannot, of itself, create a material change of use. Neither can its off-site effects. In conclusion on the point of change in the definable character of the use and off-site effects, Justice Ousley states (Paragraph 45):

"...But for all that, the cases have all emphasised the need to identify a material change in the definable character of the use of the land. None of them has



suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case."

- 5.20. As such, any planning consequences arising from the proposed development can be considered to be contributing material factors in determining whether any change on the definable character of the use is material. However, if there is no identified change to the on-site character of the use, then the planning consequences, no matter how severe, could not on their own change the definable character of the use. On this basis, it is a pre-condition that there is a change in the on-site character of the use for there to be a material change of use. Once it is accepted that there is a change in the definable character of the use, in deciding whether such a change is material, it is relevant to then look at the off-site effects.

Reed V SoS 2014

- 5.21. In addition, Reed v SOS [2014] (**Appendix 3**), in particular Paragraph 21, confirmed that although intensification of the use can point towards a change of use, if there has been no change to the definable character of the land, then it would be difficult to argue a change of use has taken place. The *Reed* case related to an enforcement notice which alleged a change of use from mixed use equestrian purposes and the stationing of one static mobile home and one touring caravan to mixed use for equestrian purpose and stationing of two static mobile homes, touring caravans and one storage container had occurred and in the judgement, the Court of Appeal was clear that it is the character of the use of the land which must be assessed. The use of the land was mixed use for a caravan site and another use. It remained as such, according to the Court of Appeal, despite the increase in the number of caravans.
- 5.22. As the total number of units within the planning unit would not increase, it is the applicant's position that the planning unit would not suffer any intensification as a result of the proposal. The appeal case White Horse Park Homes (Appeal Ref: APP/F1230/X/18/3206065 & APP/P1235/X/18/3206069, see **Appendix 4**) is particularly relevant in this case. At White Horse Park, the proposal sought to spread the total number of caravans across the whole of the planning unit (two fields, referred to as Field A and Field B), without any increase in numbers (i.e. very similar to the proposals enclosed within this application). The Inspector confirms that position in Paragraph 13, stating:

13. "There would be no increase in the number of caravans. As proposed, up to 17 caravans could be spread over the two fields or in any other configuration."

- 5.23. In that case, both Field A and B were confirmed to be in the same planning unit, which is the same as this case at Hayling Island. Field B was within an Area of Outstanding Natural Beauty (AONB) and in a separate Local Planning Authority's jurisdiction. The Inspector's Conclusions are clearly set out from Paragraph 37 – 39:

37. "In this case, no increase in numbers is sought and there are no limits on the type of caravan or manner of occupation. Up to 17 caravans are certified as lawful by the 2017 LDC for Field A and it is up to 17 caravans in total across both fields that is proposed"



38. *"Whilst I understand the Councils' concerns over landscape impacts, the simple fact remains that the effect of the 2018 LDC was to confirm the established use of Field B as part of an existing caravan site."*

39. *"For development to occur there must be a 'material change of use' as set out in section 55 of the 1990 Act. On an ordinary interpretation of the words it is the change of use that must be material. If the use would remain as per the current lawful use, then no change would take place. That is the scenario here. No new use would be introduced for there to be a change of use, nor would there be any intensification of an existing use. The land established as being in ancillary use forms part of the caravan site. There are no conditions to prevent the use of the ancillary land for the stationing of caravans."*

5.24. The LDC was issued by the Inspector.

5.25. Turning back to the existing context at Hayling Island, the baseline development is that the planning unit is a caravan site, with planning consents for up to 559 static caravans to occupy the planning unit. The proposed development will result in their continuing to be a maximum of 559 static caravans on the site. The change will be that, instead of up to 112no static caravans occupying the land benefitting from consent reference APP/23/00769, there would be up to 177, with 65 fewer units on the remaining land, for no net change over the planning unit. There would be no 'development' on site which could be considered to cause a material change of use. There would be no intensification, and there would be no change in the baseline description of the use.

5.26. Nevertheless, should the Council consider that the proposal does amount to intensification, there are appeal cases which have looked at this matter regarding the intensified use of a site and whether that would amount to a material change of use. The relevant cases for the current proposal including those at Cannisland Park (Appeal Ref: APP/B6855/X/18/3213425, **Appendix 5**); The Smithy, Brigdnorth (Appeal Ref: APP/J3205/X/09/2099134, **Appendix 6**) and Greenacres, Suffolk (Appeal Ref: APP/W3520/X/07/2039698, **Appendix 7**). We summarise those appeals below.

Cannisland APP/B6855/X/18/3213425 (2019)

5.27. This involved the stationing of 20 additional caravans on land that benefitted from a CLEUD for recreation use ancillary to the caravan site. In the case of Cannisland Park (**Appendix 5**), the Inspector concluded (Paragraph 11) that:

11. *"Indeed, the development would not result in materially different planning circumstances to that currently, or potentially, found at Cannisland Park and, as a matter of fact and degree, the development would not result in such a change to the definable character of the use or area that it would result in a material change of use. In coming to this conclusion I have had full regard to the impact of the development on other uses and premises, including those relating to amenity and traffic. I am also satisfied that such a finding is consistent with the principles established in the judgements referred within the evidence, including the Reed, Metal and Waste Recycling and Childs cases"*



- 5.28. The LPA also accepted this principle, that there would be no material change of use.
- 5.29. This demonstrates that a net increase in the number of caravans on a site and an intensification of the use is deemed alone not to result in such a change to the definable character of the use that a material change of use would result.
- 5.30. In this case, where there is only a repositioning of caravans across the planning unit and no increase in number overall, there cannot be a material change of use from intensification.

The Smithy APP/J3205/X/09/2099134 (2010)

- 5.31. When looking at the Smithy decision (**Appendix 6**), it can be summarised that the application sought was for the use as a residential caravan site accommodating 6 caravans. The existing caravan site had a planning permission for one mobile home. The proposal sought to increase the number by 5 units (an increase to the park of 600%). In Paragraph 14, the Inspector quotes the key line from the case referred to as Lilo Blum 1986, and this confirms that:

“a proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use.”

- 5.32. At Paragraph 15, the Inspector noted that the mobile home on site is visually prominent and highlights that what is permitted is a ‘caravan site’, although what exists is a low-key site. Following on, at Paragraph 16, the Inspector indicated that with the increase in units, the site would change, in that there would be more hard surfacing, activity, traffic and paraphernalia, but then concludes:

“But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site and, in my view, that is the character it would have with the additional caravans there... It would simply be more of the same use”

- 5.33. This demonstrates that ‘more of the same’ is not considered a material change of use. In this case, there is not ‘more’, there is only repositioning.

Greenacres APP/W3520/X/07/2039698

- 5.34. Under Greenacres Park (**Appendix 7**), the application sought an increase in the number of caravans on a lawful caravan site from 6 to 12 (a doubling). At Paragraph 3 the Inspector referred to the Brooks and Burton 1977 case and held that in assessing whether there was a material change of use, account had to be taken of the existing character of use, including consideration for the planning consequences and environmental impact of a particular use. The Inspector emphasised the change must be material as a matter of fact and degree for there to be a material change of use.
- 5.35. In line with *Hertfordshire* and *Reed*, it is first necessary to decide if there will be a change in the character of the use of the land. If there will not be a change in the character of the



use, then there is no need to assess if that change would be material. If there is a change in the character of the use, then we would need to consider whether that generates a material change of use. As part of that exercise, we can consider the extent to which off-site effects could contribute to there being a material change of use.

Would the Proposal Result in a Change in the Character of the Use of the Site?

- 5.36. The Oxford English Dictionary defines ‘character’ as “*The distinctive nature of something*” and makes reference to the phrase ‘in character’ as “*In keeping with someone’s usual pattern of behaviour and motives*’.
- 5.37. On this basis, it can be said that, for a use of land to change its character, the ‘*distinctive nature*’ of the use, as well as its ‘*pattern of behaviour*’, would need to change, when compared to the lawful use of the land.
- 5.38. The current use of the planning unit is a caravan site, which has express planning consents and may provide up to 559 caravan units in total across the planning unit. The total number of caravans that would be stationed on the land benefitting from APP/23/00769 would increase from 112 to 177, however the total number of caravans that would be stationed on the planning unit will remain exactly the same at 559. There will no net increase in number. The applicant does not consider that there will be any intensification as a result of the proposal.
- 5.39. However, without prejudice to this view, In *Reed* (**Appendix 3**) the appellant was successful in demonstrating that an Inspector had applied the wrong test for material change of use and erroneously concluded that mere intensification amounted to a material change. The appellant had been granted planning permission for the use of part of the land which he occupied as a caravan site for his family. The other part of the land was used for equestrian purposes. The appellant replaced his original mobile home with a larger one in a position that was not in accordance with the conditions attached to the grant of planning permission. In deciding the appeal against enforcement action, the Inspector had concluded that doubling the number of caravans on the site constituted a material change of use. This view was then endorsed by a High Court judge, but the Court of Appeal considered the judge had erred in his treatment of *Hertfordshire* and that the inspector had applied the wrong test in concluding there had been a change of the mixed use on the sole basis that there was an additional caravan on site. The question should have been whether the definable character of the mixed use had changed and not the number of caravans on site. Therefore, it was held that the ‘*mere intensification*’ in and of itself would not necessarily amount to a material change of the character of the use of the land.
- 5.40. It is established above that the lawful use of the application site is a caravan site. The proposal is to reposition 65 units in total. As established above, the definition of a caravan site is “*land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*”. Under this proposal the use of the land would remain a caravan site.



- 5.41. It seems inconceivable that a caravan site with 559 caravans would have a different character of use to a caravan site with 559 caravans. Both are caravan sites and both would still incorporate other ancillary uses.
- 5.42. Over the whole planning unit there would no increase in the number of caravans. The only difference is that the area of the planning unit that has caravans stationed on it would change. There will be a decrease in one area (the land benefitting from planning permissions) and an increase in another area (the land benefitting from a CLOPUD). There are no conditions controlling the number of caravans in the area benefitting from the CLOPUD enabling up to 112 static caravans, and so there is no limitation on number. Whilst the increase in the number of caravans could be viewed as an intensification of the use, the above cases confirm that mere intensification of itself is not enough to trigger a material change of use if it does not change the definable ‘character’ of the use. In this case the definable ‘character’ of the use remains a caravan site.
- 5.43. In line with the *Hertfordshire* and *Reed* cases, no further assessment of off-site effects is necessary, because if the character of the use is the same then any changes to off-site effects cannot be material. Without prejudice to this, we have however provided a brief review below.

Would the Proposal Effect Neighbouring Uses and the Locality?

- 5.44. The *Hertfordshire* case established that only when there is an identifiable change in the character of the use can external effects of the proposal be assessed to assist with determining if that change is material. Whilst we have already established that there would be no change in the character of the use of application site, for completeness we consider external impacts and neighbouring uses. We are assessing here whether the repositioning of caravans from one area of land to another within the same planning unit, where there are no relevant planning conditions, would have different off-site impacts.

Neighbourhood Amenity

- 5.45. The application site benefits from a perimeter of strong vegetation providing screening along the outer boundaries in particular. That screening is made of trees and hedges, which will be safeguarded and retained. At present, the existing caravan units stationed on the land do not conflict with neighbourhood amenity, and the proposed development will not advance the planning unit towards any residential dwellings. The proposal would not result in any material loss of outlook, privacy, amenity, light and nor would it result in any material sense of increased enclosure upon neighbouring properties as there would be no expansion of the planning unit.
- 5.46. There is a Public Right-of-Way (PRoW) running through the application area. The relocated units will be more visible from the PRoW, however they will be seen stationed on an existing caravan site and would always been seen against the backdrop of a caravan site. As such, the proposal would not amount to any perceivable change in external effects compared to the lawful use already permitted, and therefore would not lead to a material change of use as a result of neighbouring amenity to the extent that it would change the



off-site impacts.

Visual Amenity and Landscape

- 5.47. With regards to landscape, there would be no material changes in levels, boundary treatment or mature trees on site to a degree which would increase the impact of the site on the local or wider landscape in any material way.
- 5.48. When viewed from off-site, the relocation of the units would be noticeable in only a very small way. Any views would be seen in the context of the wider caravan site. It would present no material change to the character and appearance of the site and wider area. Thus, the proposed use of the site would not result in material off-site impacts regarding visual amenity and landscape.

Traffic

- 5.49. Whilst the site is relatively remote and in a countryside location, it is accessed from the A3023 road which has sufficient capacity for the existing site. There will be no increase in the number of units over the planning unit. In the *Hertfordshire* case, a large increase in lorries accessing that site was considered, and it was held that any increase in off-site noise from the increased passage of lorries did not mean there had been a material change of use of the land. Such an approach is also in line with the Inspector's findings under the Greenacres Park appeal. Therefore, it is apparent that matters of traffic are unlikely to be material in planning terms, as existing or proposed.



6. Conclusion

- 6.1. In overall conclusion, this CLOPUD application seeks to establish the lawful principle of repositioning 65 static caravans from Land benefitting from consent reference 95/52816/4 and 07/52816/011, onto Land benefitting from consent reference APP/23/00769, would not result in a material change of use of the caravan site at Hayling Island Holiday Park.
- 6.2. The lawful use of the application site is defined on the 2023 CLEUD and CLOPUD. The site is a caravan site.
- 6.3. The site benefits from the permissions noted above and may lawfully occupy 559 static caravans as described in the written particulars to application reference APP/23/00769. The proposed development will not result in an increase to the overall number of static caravans across the planning unit.
- 6.4. There are no other LDCs or planning permissions applicable to the application site, nor have/are there any enforcement actions being taken. The extant planning permissions do not contain conditions controlling the number of caravans. However even if they did, the units will be removed from the areas benefitting from planning permissions and repositioned onto land benefitting from LDC reference APP/23/00769. Because that land is operating solely under an LDC, with no planning permissions relating to the land, there are no conditions applying to that land.
- 6.5. The question for the Local Planning Authority is therefore, does the proposal amount to a material change of use? The process for examining this is prescribed in law and for there to be a material change of use, there must be a change in the character of the use itself.
- 6.6. Case law examines that intensification alone cannot cause a material change of use. Where there is no identified change to the on-site character of the use then there cannot be a material change of use.
- 6.7. The current lawful use of the whole planning unit is a caravan site occupying up to 559 caravans and ancillary areas. This proposal to reposition 65 caravans will not provide an increase in the number of caravans across the planning unit. In the *Reed* case (2004), the Court of Appeal overturned a High Court Decision to allow a doubling of units, which would not be a material change of use. As such, the proposed increase of 0% would equally not have an impact on the definable character of the use. Other relevant cases include the Cannisland Park appeal, Smithy and Greenacres appeals.
- 6.8. In summary, the existing use of the site is a caravan site. As there would be no change in the definable character of the use as a result of the proposal, there would not be a material change of use. The proposal therefore does not constitute development, and the certificate may be issued.



Appendixes



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