

Planning and Environmental Appeals Division
Appeal Decision Notice

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Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Certificate of Lawful Use appeal reference: CLUD-110-2002
- Site address: Castlewood Caravan, Strachan, Banchory, AB31 6NQ
- Appeal by Castlewood Leisure Club Ltd. against the decision by Aberdeenshire Council
- Application for certificate of lawful use APP/2020/1094 dated 9 June 2020 refused by notice dated 24 August 2020
- The subject of the application: confirmation that the siting of up to 70 static caravans for human habitation throughout the year would be lawful
- Date of site visit by Reporter: 17 December 2020

Date of appeal decision: 25 March 2021

Decision

I allow the appeal (in part) and grant a certificate of proposed lawful use in the terms set out in the certificate at the end of this notice.

Preliminary

The appeal was registered using the description in the council's decision notice on the application dated 24 August 2020: 'addition and permanent residential occupation of 45 static caravans and permanent occupation of existing 25 static'. The appellant requested that the appeal description be changed to the description in the application itself, which is repeated in the appeal form: 'confirmation that the siting of up to 70 static caravans for human habitation throughout the year would be lawful'. The appellant considers that this is clearer and more appropriate to the proposal in question.

As section 151(1) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) makes clear, it is a matter for the appellant to describe the proposed use whose lawfulness it seeks to confirm. It is the appellant's description, therefore, not the council's description that I will consider at appeal. This does not detract from my power set out in section 152(4) of the 1997 Act to issue a certificate for the whole or part of the land specified in the application and, where the application specifies two or more uses, operations, or other things, for all of them or one or more of them, should the evidence justify that.

Reasoning

1. In the context of a certificate of lawfulness appeal, it is not for me to decide whether the proposal would be acceptable in planning terms, only whether it would be lawful.
2. The council's reason for refusal of the application for the certificate is that an "increase from 25 caravan stances to 70 is a material change to the site which would constitute development".
3. There is an existing lodge park to the west of the appeal site, containing a number of timber lodges, approved in 2008 (reference APP/2008/1033). On my site inspection, I counted 32 lodges in this western site, including one empty stance. The appeal site lies to the east of the original lodge park and extends to 1.8 hectares. Access is off the single track U146K road, by way of an internal access road through the original lodge park. The appeal site itself is bounded by a steep banking to the north and a field boundary to the east. Along the southern boundary, there are some mature trees, mostly silver birch, but these do not constitute a contiguous woodland or hedge. The site is visible from the south along parts of the main B976 road.
4. It is a matter of common ground that the siting of caravans on the appeal site required planning permission and this was granted in 2017 (reference APP/2017/0546). This permission has been implemented. On my site inspection, I counted 14 static caravans currently on the appeal site, plus two empty stances.
5. I understand it was not the council's intention to grant permission for static caravans for human habitation throughout the year, but rather for holiday caravans. Nonetheless, there is no condition restricting use for human habitation throughout the year in the permission. The council has conceded that the permission allows caravans on the site to be so used. I am aware that on 9 February 2021, Aberdeenshire Council issued a Certificate of Lawful Use (reference APP/2020/2529) for permanent occupation of 25 caravans on the site approved under APP/2017/0546.
6. At issue between the parties is the extent to which the permission restricted the number of caravans on site. The description of the permitted use in the planning permission is "caravan site (25 stances)". The appellant does not dispute that the use for which permission was granted was a caravan site in which there would be 25 caravan stances. There is no condition restricting the use of the site to prevent it being used for more than 25 caravan stances. The issue that arises is whether there would be a material change of use of the site if it was used, as the appellant proposes, for up to 70 static caravans.

The legal framework for the appeal's determination

7. Parties have drawn my attention to a number of decisions of English courts relating to intensification, dealing with when it constitutes change of use and its materiality. Although these cases represent the position in English law not Scots law, there is nothing in the submissions before me that would suggest that the position in Scots law is materially different.

8. *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 confirms a point parties have agreed on – that when planning permission is granted for a particular use, any limitation on the way in which that use is to be exercised must be imposed by condition. The facts of that case have some similarity to the present case: the description in the permission at issue in that case referred to the siting of a specified number of caravans within a caravan site, but no condition limited the number of caravans to the number specified in the description. The court confirmed that the description did not limit the number of caravans on the site and that a proposal for the siting of additional caravans raised the question only of whether that would constitute a material change of use from the permitted use.

9. In *Hertfordshire County Council v Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited* [2012] EWCA Civ 1473, the High Court found that mere intensification of a use of land does not by itself amount to a material change of use if it falls short of materially changing the definable character of the use of the land. In *Reed v Secretary of State for Communities and Local Government* [2014] EWCA Civ 241, the Court of Appeal confirmed that this principle would apply to an increase in the number of caravans in a caravan site. Moreover, in *Hertfordshire*, the court found that, while significant environmental effects, on- or off-site, might be evidence that a material change of use by intensification has occurred, they do not themselves constitute a material change of use. The court gave the example of the introduction of a specialist gas-bottle disposal facility in an existing scrapyard. An increase in scrapyard noise does not by itself amount to a material change of use, but the different and additional noise impact of the bottle facility might be evidence of its being a materially different use.

10. The council has cited *Childs v First secretary of State and Test Valley Borough Council* [2005] EWHC 2368. This was a decision of the High Court. The court upheld an inspector's decision, in which the inspector found a proposed increase in the number of caravans at a site from four to eight would bring about a material change of use. Neither in *Hertfordshire* nor in *Reed* did the court refer to *Childs*, let alone suggest it was wrongly decided. *Hertfordshire* was a subsequent decision of a superior court, and *Reed* was a subsequent decision applying *Hertfordshire* in the context of intensification of the use of a caravan site. I consider that they should be relied upon as setting out the principles by which the present case is to be decided. However, there is nothing in *Reed* or *Hertfordshire* that would indicate an increase in caravans at an existing caravan site is incapable of bringing about a material change in the use of such a site. They do not appear to be incompatible with the decision in *Childs* in this sense.

11. On the basis of the cases that have been cited to me, I agree with the appellant that there are (potentially) two questions for me to decide:

- first, would there be a definable change in the character of the use of the land from the permitted use if the proposed use went ahead?
- second (if the answer to the first question is yes), would the change of use be material?

I agree with the appellant that any effects of any such change of use, on- or off-site, would only be relevant to the second question.

The planning unit

12. The appellant has also raised the issue of what the planning unit is in respect of which a change of use arising from the proposal is to be considered. In order to determine either of the questions in the previous paragraph, I also need to determine this first.

13. The appellant alleges that (for some purposes at least) the appeal site forms a single planning unit with the original lodge park.

14. The permission granted for the original lodge park (APP/2008/1033) bears to be for operational development (the erection of holiday lodges and indoor swimming pool, gymnasium, spa and sauna) rather than for change of use. No permission is expressly granted for use of the site as a caravan site. Though the report of handling suggests the holiday lodges meet the legal definition of caravan, there is no indication of this in the permission. It may be that their degree of permanence and attachment to the ground and to utilities made it appropriate to treat them as operational development. Be that as it may, the use of the permitted “holiday units” is restricted by condition 2 to temporary holiday letting accommodation, which would indicate a different permitted use of the lodges from the permitted use of the appeal site.

15. From my site inspection, I find that there is a separation between the original lodge park and the appeal site by virtue of landscaping, boundary treatment and, in part, an access lane. Alongside the landscaping, there is also a large storage and service area between the holiday lodges and the western edge of the appeal site. As set out above, they have had separate planning permissions granted in respect of them. The permitted use of the appeal site is acknowledged to include use of caravans for year-round occupation, not just holiday use. The present appeal relates solely to the appeal site apparently because a separate and later permission was granted in respect of it that differs in its terms from that for the original lodge park. Given these factors, I find that the appeal site is a separate planning unit. That is not to say that the original lodge park and the context it provides in terms of, for instance, the visual baseline or baseline traffic situation in the area of the proposal are not relevant evidence in assessing the materiality of any change of use brought about by the proposal. I say more about these issues below.

Whether a change in the character of use of the land would arise from the proposal

16. On my site inspection, I observed two distinct levels within the appeal site, with 14 caravans or pitches currently at the western end of the upper level and none on the lower level. Some of the existing caravans are sited close to the steep banking along the northern boundary. Aerial photos submitted in evidence indicate that a number of trees were removed from the site sometime between 2012-2018. Some trees and bushes remain, dotted through the site and along the eastern and southern boundaries, consistent with field boundaries in the surrounding rural setting. The trees are mostly thinly spaced and the site is visible through the trees from the south. I note that there is another area to the south of the appeal site, which looks to have been levelled, but that this is not within the red line boundary. Based on the size and layout of the caravans already on site, I find that

the existing use is a low density, lightly wooded but open caravan site, with parking and amenity space around the caravans.

17. In order to assess whether the proposed use would involve a definable change in the use of the site, I have considered how 70 caravans could be accommodated on the site, given the topography and existing landscape features. The precise location of the caravans within the site would be a matter for the appellant in conjunction with the requirements stemming from the site licence, which flow from the Caravan Sites and Control of Development Act (1960) (the 1960 Act). My assessment of whether a use for 70 caravans would involve a material change of use is separate from the assessment (which is not for me) of whether such a number of caravans would ultimately be permitted under the caravan licensing process. Nonetheless, I sought the further evidence of an indicative layout to aid my assessment.

18. From what I have seen on my site inspection, and taking into account the submitted evidence, I have some reservations about whether the site could accommodate the proposed indicative layout, given its topography. Nevertheless, from the submitted plan, I find that the proposed siting of up to 70 units would require caravans to be tightly packed together, in rows off narrow access lanes. I recognise that the site operator has some flexibility in exactly where to site caravans. I consider it unlikely, however, that this number of caravans could be arranged less tightly together without further operational development. I therefore find that the siting of 70 caravans would have the character and appearance of a hamlet in urban form, with the caravans arranged closely together and the built elements greatly outweighing the open or landscaped elements.

19. I note that section 5(1) of the 1960 Act gives the licensing authority power through the site licence to restrict the number and layout of caravans and to take steps to preserve or enhance amenity of the land, amongst other things. Nevertheless, in terms of assessing whether 70 caravans can be located on the site without a material change of use, I have considered the implications of possible layouts for the amount of space around the caravans and how it might be used.

20. With 25 caravans on the site, I consider that there would be generous spaces between the caravans for car parking but also other activities, for example, playing ball games, having barbeques and fixing bicycles. Alternatively, the site operator might chose to provide a larger central amenity space for communal events, and leave less space around individual caravans. However, the close proximity of 70 caravans and the consequent increase in density would result in caravans with little if any space around them for activities other than parking or manoeuvring caravans and associated vehicles. As a result, even taking into account the flexibility that would exist around the precise location of caravans, I consider that uses that might be possible with 25 units on site would not be possible with 70 units.

21. In light of the above, I consider that the increased density of the proposed additional caravans would result in a change in the character of the use and in the way in which the operator and residents could use the land. I find that the proposed move from a low-density, open and lightly wooded site with amenity space around the caravans, to a high-

density hamlet in urban form, with limited amenity space, would represent a definable change in the use of the appeal site.

Materiality of change

22. Looking at whether a material change has occurred, the council contends that the proposal would alter the visual prominence and impact of the use from that permitted. It considers that the character and appearance of the land would be changed through the intensification, and that the development would appear as a small housing estate in the countryside which would have an urbanising effect. The council also contends that there would be the potential for detrimental implications for roads infrastructure, water and drainage, provision of education, and health and social services.

23. The appellant contends that the characteristics of the use and pattern of behaviour involved would stay the same, since the site would start and end as a caravan site. Therefore the appellant considers that no material change of use would occur.

24. While this is not a planning application, so formal neighbour notification is not required under the 1997 Act, I note that the council received letters from neighbours about the proposed certificate. Neighbours have raised concerns over possible impacts of the proposal, particularly education and drainage impacts.

25. There is no continuous or thick block of trees along the eastern and southern boundaries. The site therefore is not fully screened and so caravans are visible from the south and south east. Given that the proposal would require caravans to be sited much more closely together, I find that the view would be altered and there would be a change in what would be perceived from certain locations, particularly from the neighbouring property to the south and from parts of the B976 main road. Many more caravans would be visible, and it would more obviously be a view of an urban form than of a rural wooded site. This change in the view of the site from the south and south east would be of a degree that indicates to me that the proposed change of use would be material.

26. In addition to the changes I have highlighted above in the way in which the spaces between the caravans could be used, I consider it likely that the close proximity of caravans to each other would result in some impacts on amenity that would further affect how residents used the site. For the purposes of maintaining privacy, windows in new residential properties are typically spaced a minimum of 18 metres apart or nine metres if the windows are not directly facing. While the proposed use is not a regular housing development, such typical separation distances are indicative that there is likely to be a tangible change in the degree of privacy that the proposed density of caravans would allow.

27. In this case, the tight layout means that caravans are likely to be much less than 18 metres apart, in places perhaps only a few metres apart, meaning that there would likely be overlooking which could affect the privacy of residents and cause them to close curtains or to not use certain rooms at times. If there was space for balconies (which the tighter layout may preclude) then residents may choose not to use them at certain times due to overlooking. Close proximity of caravans could also result in noise and cooking smells from

one caravan affecting the neighbouring caravan, again limiting balcony use or requiring windows to be kept closed. While I recognise that site licensing can allow for much closer layouts than would be usual for regular modern housing developments, when compared with use at the permitted density of 25 units, the tighter layout of 70 units is likely to give rise to privacy and amenity issues that would change how people used and lived in their caravans. I therefore find that amenity effects in terms of overlooking, noise and smells point towards a material change of use in the site.

28. Looking at traffic issues, access is from the U146K single-track road which has the character of a rural road and which leads on to a small number of residential and agricultural properties further to the north. An internal access road through the original lodge park connects the appeal site with the U146K. The U146K has a junction with the B976 to the south of the site. Conditions on the 2017 planning consent required road widening works and the creation of visibility splays and passing places on the road between the site and the junction with the B976. I note that there are some opportunities for vehicles to pass on the single-track road, although I did not observe any formal passing place signage. There are no kerbs on this stretch of road and there appears to be some damage to soft verges. Neighbours have raised concerns about cars passing on the single track road, including damage to verges, and potential adverse road safety impacts from increased amounts of traffic turning onto the B976.

29. I have taken into account the appellant's views on traffic impacts and on the relationship with the original lodge park. I accept that traffic from the original lodge park and that from the permitted use of the appeal site would be part of the existing baseline of traffic on the U146K and on the internal access road through the original lodge park. With this in mind, I consider that the increase in the amount of traffic on the U146K and this internal access road would be a relatively small proportion of the overall baseline traffic. There are, however, likely to be some minor changes in the way these roads are used, in terms of more vehicles having to reverse or wait to pass each other.

30. Looking at the internal access lanes within the appeal site itself, with an increase of 25 to 70 units, the proportion of additional traffic would be higher than that on the internal access road and the U146K. The traffic from the additional permanent residential units in the appeal site would be all-year round and involve regular visits from delivery vehicles and regular trips to and from local health and educational facilities. As a result, I find it very likely that the way that traffic would use the internal access lanes on the appeal site would differ under the proposed use.

31. There would be more instances throughout the year of vehicles meeting each other and having to wait to pass or reverse. As mentioned above, this would also affect the U146K and the internal access road connecting the appeal site with the U146K, but to a lesser degree. As the internal access lanes do not have pavements, waiting or reversing vehicles could require pedestrians to move onto verges as well as having potential noise impacts on residents, given that the tight layout of the site means that access lanes would be close to caravans. My expectation is that the number of vehicles moving around a site for 70 residential units suggests a need for additional infrastructure within the appeal site,

such as pavements, two-way accesses, formal passing points and related signage, that would not be considered necessary for 25 units.

32. Use of the appeal site for 70 caravans would in my opinion cause a change in character in the internal access lanes, from quiet lanes with occasional vehicle movements, to well-used access roads with multiple daily vehicle movements from residents' vehicles, delivery and service vehicles. I consider that additional infrastructure such as pavements, formal passing places and signage would contribute to more of an urban character. I therefore find that traffic effects, particularly within the appeal site, suggest that there is a material change of use arising from the proposal.

33. Taking the above into account, I recognise that the urbanising effects I have described may appear in different degrees in the range of different layouts possible within the site. However, I find overall that the likely changes to views of the site, effects on residential amenity and changes to the internal access lanes, both in their character and the way in which residents and visitors would use them, are evidence of the urbanising effect of the proposed use that amounts to a material change.

34. I have noted above that the council and neighbours have highlighted concerns relating to impacts on water, drainage, sewage, education, health and social facilities. However, I do not have sufficient evidence in respect of them to draw a conclusion on whether they also support a finding that the proposed change of use would be material.

Conclusion

35. The evidence leaves me in no doubt that a use of the appeal site for 25 units for human habitation throughout the year would be lawful. I find that use for 70 units would involve a material change of use from that permitted and so would not be lawful under the present permission.

36. I have had regard to the other issues raised, including the inspectors' decisions that were submitted in evidence, but find that this case must be determined on its own facts and circumstances.

37. Section 154(3)(a) of the 1997 Act requires a certificate to be issued on appeal if the appeal decision maker is satisfied that the authority's reason for refusal is not well-founded. In this case, I find that the authority's reason for refusal of the permanent occupation of up to 70 units is well-founded, and I therefore decline to issue a certificate for that. However, I find that the council could have issued a certificate for permanent occupation of a smaller number of caravans, and the evidence before me is sufficient to allow me to grant a certificate for a use for 25 caravans. The council's recent issuing of another certificate to that effect, as highlighted above, is further justification for that view. I therefore issue a certificate confirming the lawfulness of use of the site for 25 caravans for human habitation throughout the year.

Rosie Leven

Reporter



Certificate of Lawful Use or Development

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 150 AND 151 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 Regulation 44(6)

I hereby certify that on 9 June 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured outlined red on the plan attached to this certificate was lawful within the meaning of section 150 of the Town and Country Planning (Scotland) Act 1997, for the following reason(s):

Under the terms of the Town and Country Planning (Scotland) Act 1997, Aberdeenshire Council planning permission APP/2017/0546 does not restrict the occupation of the caravans to temporary use only and the siting of up to 25 caravans for such a use would not involve a material change from the use permitted by that permission.

Rosie Leven

Reporter

Date: 25 March 2021

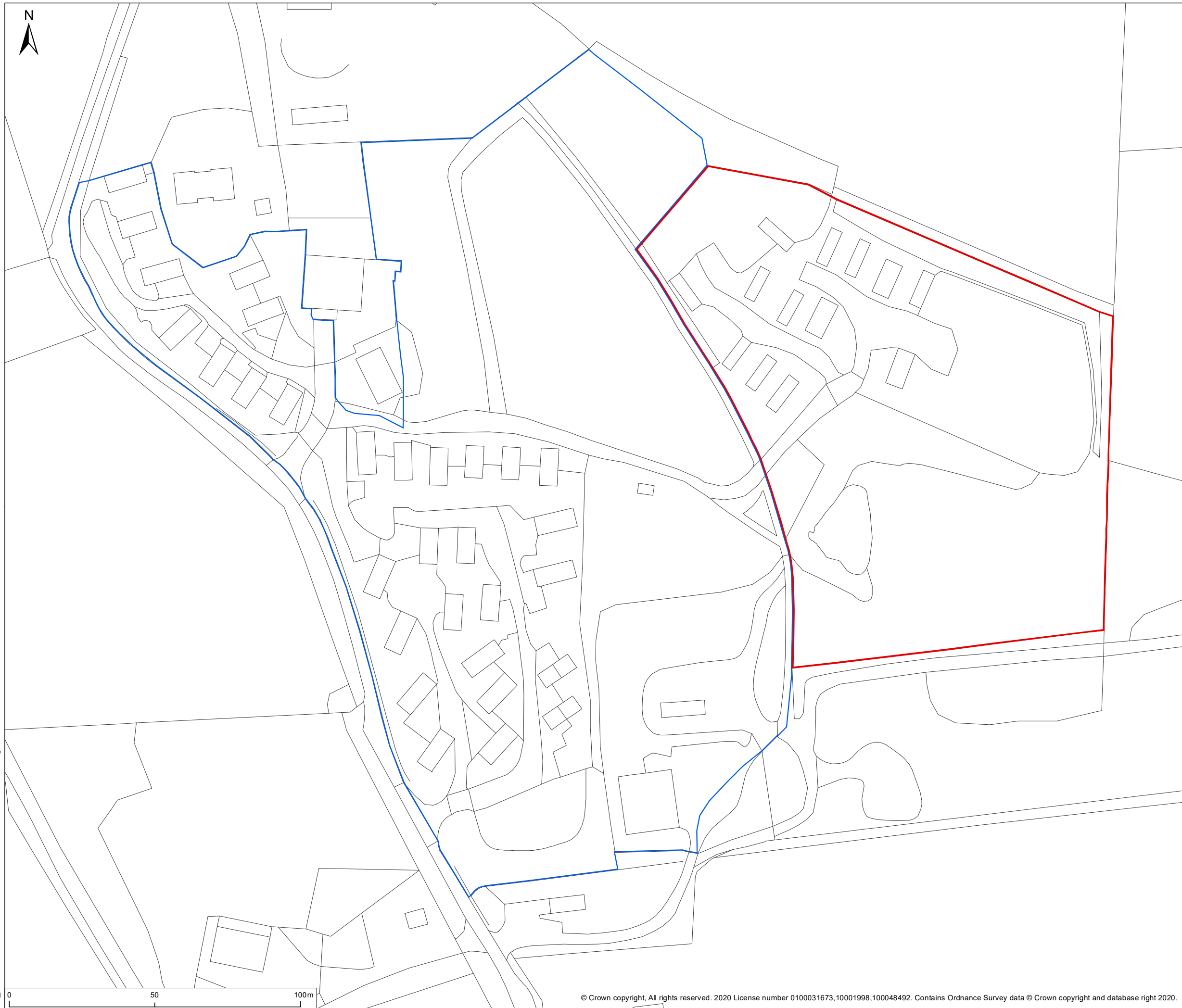
First Schedule: Siting of 25 caravans for human habitation throughout the year under Aberdeenshire Council planning permission APP/2017/0546.

Second Schedule: the site, marked red on the attached plan, at Castlewood Caravan, Strachan, Banchory, AB31 6NQ

Notes

1. This certificate is issued solely for the purpose of section 150 of the Town and Country Planning (Scotland) Act 1997.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and, thus, was not liable to enforcement action under section 127 of the 1997 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 151(4) of the 1997 Act, 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 matters relevant to determining such lawfulness.





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Notes

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Legend

- Redline boundary
- Other land under applicants control

Rev	Description	By	CB	Date



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Client **Castlewood Leisure Club Ltd**

Project **Castlewood Leisure Club**

Title **Site Location Plan**

Status **DRAFT** Drawn By **MS** PM/Checked By **JR**

Project Number **PS1554** Scale @ A3 **1:1,250** Date Created **JUN 2020**

Figure Number **1** Rev **-**

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