

Application No: 09/94287/LDCE Lawful Development Certificate Existing

Site: Paultons Park, Ower, Romsey, SO51 6AL

Proposal: Application for a Certificate of Lawful Development for existing use of land as Amusement Park

Applicant: Mr R Mancey

Case Officer: Laura Harry

Parish: COPYTHORNE

1. DISTRICT/BOROUGH: New Forest District Council

2. REASON FOR COMMITTEE CONSIDERATION

Applications 09/94285 and 09/94286 have been reported to the Committee because the recommendations are contrary to Parish Council view.

3. DEVELOPMENT PLAN DESIGNATION

No specific designation

4. PRINCIPAL DEVELOPMENT PLAN POLICIES

Not applicable.

5. MEMBER COMMENTS

None received.

6. PARISH COUNCIL COMMENTS

Copythorne Parish Council: Happy to accept the decision reached by Officers under their delegated powers - do not have any evidence to support or deny the evidence submitted with the application.

7. CONSULTEES

Legal Services (HCC): The Senior Solicitor has examined the evidence submitted by the applicant and considers that a Lawful Development Certificate should be issued.

8. REPRESENTATIONS

8.1 Statement by the agent that the evidence submitted demonstrates the site has been used as an Amusement Park for more than 10 years.

Rides have been added and removed as if the Park benefitted from permitted development rights for an Amusement Park

- 8.2 33 representations received, 30 of which object to the application and 3 support the application.
- 8.3 29 of the representations received refer to the planning merits of the use and are not relevant to the purely legal issues which are involved in determining this case.
- 8.4 Four of the representations refer specifically to the Lawful Development Certificate. However, no one has provided any evidence to contradict the information submitted by the applicant.

9. RELEVANT HISTORY:

- 9.1 There is an extensive planning history (22 planning applications). The most relevant applications are considered to be the following:
- 9.2 Land as a country park with ancillary facilities (19525) granted 09 June 1981.
- 9.3 Erection of a restaurant/gift shop and farm shop/reception area with landscaping and car parking facilities (21745) granted 14 June 1982.
- 9.4 Erection of 2 ice cream kiosks and burger bars with toilets and a building for animated electronic displays. Use of land for play area with erection of associated play equipment (30425) granted 20 November 1985.
- 9.5 Erection of a railway station building to include cafe and shop and construction of scenic railway (32960) granted 18 December 1986.
- 9.6 Engineering workshop; replacement guest services; replacement ticket kiosks and canopy over; extension and upgrading of entrance and retail facilities; toilet block; upgrading of car parks (93702) granted 09 March 2009.

10. ASSESSMENT

10.1 Procedural Matters

Applications for Lawful Development Certificates (LDC) made under section 191 of the Town and Country Planning Act 1990 are different from normal planning applications in that anyone (not just a person with a legal interest in the land) may apply to the Local Planning Authority for a decision as to whether a specified existing use, operation, building or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

- 10.2 In respect of existing use of land, if an applicant can show the use has been continuous for at least 10 years (prior to the date of the application), then the Authority has to issue a certificate confirming that the use is lawful for planning purposes.
- 10.3 The onus of proof in a LDC application is firmly on the applicant. The relevant test of the evidence is the "balance of probability". The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. Such applications are normally determined by the Authority's Senior Solicitor under delegated powers. The relevant circular (Circular 10/97: Enforcing Planning Control) clearly states that provided the applicant's evidence is sufficiently precise and unambiguous, and if the Authority has no evidence to contradict or undermine the applicant's version of events, then a certificate shall be granted.
- 10.4 Site and Background
- Paultons Park is located at Ower, north west of Southampton and south west of Romsey. To the north of Paultons Park is Paultons Golf Club and to the east of the site the villages of Wigley and Ower. The Park is within a rural area, surrounded by woodland and bounded to the west by Cadnam River and to the north and east by a lake. Beyond the lake to the south east, and at a distance of 100m, are located several houses, including a Victorian terrace. Woodland and agricultural land to the south separate Paultons Park from the M27 motorway.
- 10.5 Paultons Park was granted planning permission 09 June 1981 as a Country Park (ref.19525) with ancillary facilities including: erection of a restaurant/gift shop; erection of a farm shop/reception area; change of use of barn to country museum/information centre; change of use of barn to tropical bird centre; animal paddocks, picnic areas, open space, fishing and boating facilities and the construction of car parks.
- 10.6 Planning applications were submitted and granted planning permission for 24 buildings within the existing site between 1981 and 2009. The buildings include a restaurant, gift/farm shop, country museum, ice cream/burger kiosk, animated display building, play area, toilet block, maintenance area, first aid building, office building, head keepers house, station building, themed building, extension to retail unit, staff facilities, Santa's Christmas wonderland and cedar room, extension to village life building, toilets, office extension, workshop and retail store, staff facilities, storage building, engineering workshop, replacement guest services, replacement ticket kiosks and canopy over, extension and upgrading of entrance and retail facilities, toilet block and upgrading of car parks.
- 10.7 A certificate of lawfulness is sought for the existing use of a part of the previous Country Park as an Amusement Park as defined by Part 28, Class A, paragraph A.2 of The Town and Country Planning (General Permitted Development) Order 1995. Amusement park means 'an

enclosed area of open land, or any part of a seaside pier, which is principally used (other than by way of a temporary use) as a funfair or otherwise for the purposes of providing public entertainment by means of mechanical amusements and side -shows ...' The certificate is being sought on the grounds that the use as an Amusement Park has been continuous for at least 10 years before the date of the application. The area of land to which this application relates is outlined in red on a plan titled 'Site Location Plan' (drawing number 2574-C10-17, revision B). This site is bounded by a lake to the north and east, woodland and Cadnam River to the west, the visitor car park to the south and excludes the land occupied by the Cobra and Edge rides (which are the subject of a separate planning application – Item 2.

10.8 Evidence

The submitted document 'Paultons Park Development 1997-2009' incorporates historic newspaper articles, press releases, adverts, park maps and construction photographs which detail the year when new rides were installed and when rides were removed. This evidence is a combination of the applicant's own evidence and independent evidence. There have been rides on the site for more than 10 years that one would expect to find at an amusement park.

10.9 In 1998 the following 35 rides and attractions existed within the Lawful Development Certificate boundary: Go Karts; Percy's Bouncy Castle; Trampolines; Sky Diver Ride; Krazi Karts; Rabbit Ride; Astroglide; Dinosaur Land; Japanese Gardens; Cableways; Kid Kingdom; Clock Maze; Percys Play Park; Whirly Copter; Flying Saucer; Wagoners Restaurant; Trading Post Shop; Gift Shop; Village Life Museum; Romany Museum; Tiny Tots Town; Crazy Golf; Crazy Snooker; Wind in the Willows; Runaway Train Coater; Aqua Bugs; Honda Cars; Games Area; Magic Forest; Station Restaurant; Rio Grande Train; Bumper Boats; Remote Control Cars; Santa's Christmas Wonderland; and Tea Cup Ride.

10.10 Ride test certificates when some of the rides (18 rides) were commissioned for use have been submitted, detailing the name of the device (ride) and date the test was undertaken. The earliest certificate submitted was issued in 1997 for a Family Cup and Saucer ride, the dates of the certificates range between 1997 and 2007. This provides further evidence that a number of the rides were in situ as detailed in the 'Paultons Park Development 1997-2009' document. In addition a letter from R.J. Associates Ltd., an independent registered inspection body state that they have worked with Paultons Park for ten years and have been employed to ensure and certify that their client's devices have been correctly designed, manufactured, erected, commissioned and maintained and state that the emphasis of Paultons Park for the last 10 years or more has been as a family orientated theme park.

10.11 Statements and Affidavits verifying the evidence that the area of Paultons Park within the red line has continuously operated as an

Amusement Park for more than 10 years from the following people:

- Richard and Sara Mancey (The applicants)
- Mark Taylor (General Manager, Park Operations of Paultons Park)
- Martin Lewis Curtis Russell (Senior Partner of Bells Solicitors who has acted for the applicant and their company Paultons Park Ltd. since the mid 1980's)
- Anthony Climpson (Employment and Tourism Manager, New Forest District Council)

10.12 Comments on representations

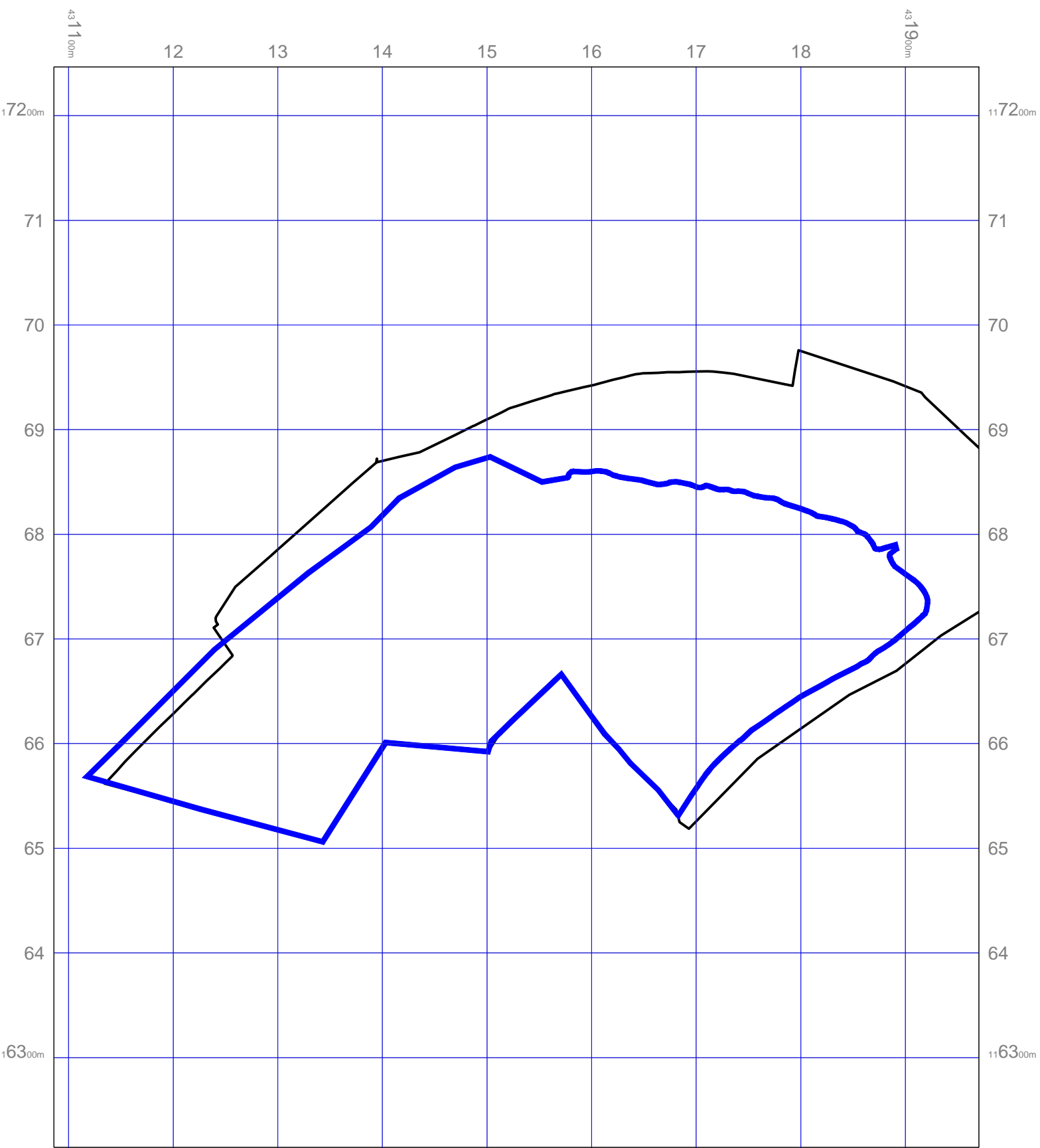
33 representations have been received, the vast majority (29) of which refer to the planning merits of the use and are not relevant to the purely legal issues which are involved in determining this application. Some comments have been submitted by the objectors which challenge the applicant's version of events but none of the comments received makes the applicant's version of events less than probable. One of the objectors has observed that use of the site changed within the last 8 or 9 years. Others have disputed the claim that the site has been used as an amusement park for 10 or more years. It is claimed by objectors that the character of the site did not change significantly until about 2002.

10.13 Conclusion

It is considered that the evidence provided satisfactorily demonstrates that the area of land to which this application relates, outlined in red on a plan titled 'Site Location Plan' (drawing number 2574-C10-17, revision B) has been used as an Amusement Park as defined by Class A, paragraph A.2 of the Town and Country Planning (General Permitted Development) Order 1995 for more than 10 years before the date of the application. In the absence of any evidence to contradict or otherwise make the applicant's version of events less than probable it is therefore considered that a certificate of lawfulness should be issued.

11. RECOMMENDATION

That a Certificate of Lawful Development for the existing use of the land as an Amusement Park be issued.



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 Date: 07:10:09
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SCALE: 1:5000

