

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: AL/123/16/CLE

LOCATION: The Paddocks
Northfields Lane
Aldingbourne

PROPOSAL: Lawful Development Certificate for an Existing use as a single dwelling house.

DESCRIPTION OF APPLICATION

This is a Certificate of Lawfulness application which seeks to confirm that the unit in question is a building and not a mobile home and following a period of 4 years continuous residential use, now has full lawful residential status.

DESCRIPTION OF SITE AND SURROUNDINGS

The dwelling in question is located in the south eastern corner of this existing gypsy/traveller site which comprises of 5 mobile homes (including this dwelling) and some other non-domestic buildings. The building in question has a small garden to the side and hard surfaced parking to the front. The building has brick skirts, grey rendered walls and a part felt, part tiled roof. The wider gypsy/traveller site is flat and entirely enclosed by either 3m high Leylandii hedging or 2m high fencing.

This is a rural location with some housing along Level Mare Lane and towards the southern end of Northfields Lane. The eastern side of Northfields Lane is predominantly in occupation by gypsy or travellers.

RELEVANT SITE HISTORY

AL/67/10/	Change of use of land to a private gypsy and traveller caravan site consisting of 3 no. mobile homes (2 of which have extensions), and associated works - This application is a departure from the development plan	ApproveConditionally 19-08-2010
AL/94/11/	Use of land as a private gypsy and traveller caravan site consisting of 4 no. mobile homes (2 of which have extensions) and associated works - Resubmission of AL/32/11 - This application is a Departure from the Development Plan	ApproveConditionally 05-01-2012
AL/85/12/	Application for variation of conditions 6 & 7 of planning approval AL/94/11/ relating to position of mobile home & tree planting	ApproveConditionally 11-02-2013

AL/25/13/	Application for the variation of condition 4 (residential units) following the grant of planning permission AL/94/11 to replace the word 'four' with the word 'five'. Departure from the Development Plan.	ApproveConditionally 12-06-2013
AL/48/16/PL	Variation of condition 4 imposed under AL/25/13/ relating to permanent gypsy traveller use & removal of name 'Mrs Sarah Keet'.	ApproveConditionally 02-11-2016

Application AL/67/10/ granted permanent permission for the retention of 3 no. mobile homes on the site. The application description noted that two of these already had extensions and the planning permission authorised the retention of these extensions. One of the extended units was B which is now the subject of this CLE.

Page 4 of the officers report for application AL67/10/ states that:

"The Council's planning solicitor confirms that the two extended mobile homes by virtue of their size can no longer be defined as caravans as per the Caravans Act 1960. However, this does not take away the applicant's gypsy status and the need to consider the application in line with national gypsy guidance."

Application AL/94/11 served only to authorise a 4th mobile home on the northern part of the site. Application AL/85/12 related to the siting of unit F and so did not affect the planning position for unit B. Application AL/25/13 granted permission for a 5th mobile home on the site this time in the south western corner but restricted to a named person. This name restriction was recently removed through application AL/48/16/PL.

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council - no comments received.

Comments on Representations received:

Noted.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

COUNCIL's SOLICITOR: "I have considered the submissions made, the officer's report and evidence on the public planning application file AL/67/10/, the legislation and case law. I agree that development took place and the caravan had become a building by the time AL/67/10/ was granted. You have confirmed that there is no extant enforcement notice relating to plot B. There is insufficient evidence to prove on the balance of probability that the occupation has been continuous for 4 years, please request a statutory declaration that evidences consistent occupancy."

Comments on Consultation responses:

Following the receipt of the above response, the applicant was requested to provide a statutory declaration along with supporting evidence to demonstrate consistent occupation. This was received on 09 February 2017. Further comments from the Councils solicitor have been sought but no further advice has been received.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states that:-

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

PRINCIPLE:

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

- (i) What is judged on a balance of probability;
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Section S171(1)-(3) and S191 TCPA 1990. The change of use to a single dwelling is 4 years.

EVIDENCE:

SS191 TCPA 1990 and Circular 10/97 Annex 8 para 8.12-8.22. The evidence is judged on a balance of probability and the above criteria is sufficient and in precise and unambiguous. The evidence consists of:

(a) A Supporting Statement by the applicants agent, Dr Angus Stanislaw Murdoch MRTPI which discusses the site history, sets out the law regarding how a caravan is defined, and analyses, with reference to case law, the issues of whether the structure is a building & then whether the building is a dwelling;

(b) A copy of the officers report for application AL/67/10 which includes the following statement: "The Council's planning solicitor confirms that the two extended mobile homes by virtue of their size can no longer be defined as caravans as per the Caravans Act 1960. However, this does not take away the applicant's gypsy status and the need to consider the application in line with national gypsy guidance."

(c) Two undated photographs of the mobile home showing an extension being added;

(d) The application form and a drawing showing the floor plan & elevations of the property; and

(e) A Statutory Declaration by the applicant which confirms that he has lived in the property since February 2004 and that it was extended in May 2009. Also provided are two Council Tax bills for the years 2014/15 and 2015/16 and a copy of an email from the Councils Site Licensing Officer to the case officer for planning application AL/48/16/PL which states that "I visited with the fire officer in November 2015 to establish which mobile homes were licenced but instead we established that units A, B and D2 do not meet the definition of a caravan and therefore do not need a licence".

ASSESSMENT:

It is clear that the applicant has been continuously living at the property for at least 4 years. It is also clear that on two separate occasions, council officers have previously considered that the property no longer meets the definition of a mobile home.

The legal definition of a caravan was established in the Caravan Sites and Control of Development Act 1960 (Section 29(1)). This was then modified in 1968 to include twin-unit mobile homes (Section 13(1) of the Caravan Sites Act 1968 (as amended)) and then again in 2006 (Statutory Instrument 2006:2374) when the maximum dimensions were increased.

Section 29 (1) of the Caravan Sites and Control of Development Act 1960 defined a caravan as:

"....Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted...."

Section 13 (1) of the Caravan Sites Act 1968, which deals with twin-unit caravans provides that a 'caravan' is:

"A structure designed or adapted for human habitation which:

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

(ii) is, when assembled, physically capable of being moved by road from one place to another (whether being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or have been) a caravan within the means of Part 1 of the Caravan Sites Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled".

The 2006 Statutory Instrument increased the maximum dimensions to a length of 20m, a width of 6.8m and an overall height (measured internally from the lowest floor to the highest ceiling) of 3.05m.

The property now measures 12.3m by 11.3m and exceeds these maximum dimensions. Furthermore, the act of adding the extension which included a roof designed to integrate with the existing is considered to take the property outside of the scope of the definition of a caravan.

CONCLUSIONS

On the basis of the above, it is considered that the property is no longer a mobile home/caravan and is in fact now a building. It has also been continuously occupied for residential purposes for at least 4 years. It is therefore considered that on the balance of probability that consent should be granted and that the certificate should be granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 31/10/16, the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 (as amended) by reason that at the date specified above, the property had been in use as a private dwelling and not a mobile home for a continuous period of 4 years.

FIRST SCHEDULE

Use of the building and associated land as a residential dwelling by Mr Darren Searle and his dependants under Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

SECOND SCHEDULE

The residential property known as 1 The Paddocks, Northfields Lane, Westergate, Chichester, West Sussex, PO21 3UH.

EXTENT OF USE

Use of the property 1 The Paddocks which measures 11.3m wide by 12.3m long and comprises of a hall, living room, kitchen/dining room, 2 double bedrooms one with en-suite and 1 family bathroom all used for residential purposes.



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