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/77/17/CLE**

LOCATION: Unit D2
The Paddocks
Northfield Lane Aldignbourne

PROPOSAL: Application for a Certificate of Lawfulness for an existing - use of building as a 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 central part of this existing gypsy/traveller site which comprises of 6 units of residential accommodation, 5 of which either were or are mobile homes (the other 1, a converted stable building), and some other non-domestic buildings. The building in question has cream rendered walls, brick skirts and a tiled roof. Open porch with two pillars over a set of steps/raised patio to the front. There is garden to the north & east and an area of gravelled hardstanding to the west. The boundary to unit B is part hedge, part close boarded fence.

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 gypsies or travellers.

RELEVANT SITE HISTORY

AL/23/08/	Use of land as a private gypsy caravan site for a single family group.	ApproveConditionally 11-06-2008
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/32/11/	Use of land as a private gypsy and traveller caravan site consisting of 4No. mobile homes (2 of which have extensions) and associated works. This application is a departure from the Development Plan	Refused 08-09-2011
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/4/12/	Single storey extension	ApproveConditionally 20-03-2012
AL/19/12/	Erection of a timber building to be used as utility & storage	Withdrawn 17-05-2012
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
AL/123/16/CLE	Lawful Development Certificate for an Existing use as a single dwelling house.	Approve 31-03-2017
AL/79/17/CLE	Application for Certificate of Lawfulness for an Existing Use - Use of building as a dwellinghouse	Approve 07-12-2017

This particular dwelling was granted temporary planning permission as a mobile home under ref AL/23/08/ alongside two other mobile homes, a touring caravan, retention of existing converted stables as an amenity/utility building and for the conversion of the other stables for similar purposes. This permission was renewed by application AL/67/10. Unit D was one of the three mobile homes and was shown in roughly the same position as currently but end on to the eastern boundary. The AL/67/10 proposed plan showed that the home was to be either extended with a southern projection or replaced as a larger unit (encompassing this extension). The AL/67/10 officers report (Officer's Comments on Reps section) states that:

"The Council is aware of the recent fire on the site and understands that the affected mobile unit D is uninhabitable and will need to be replaced."

It is also noted that the officers report (same section) 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 partly sought consent for unit D (from now on known as D2) to be re-orientated so as to be parallel to the eastern boundary. The submitted plans showed unit D2 with its current enlarged footprint and not that shown on either the existing or proposed plans submitted with AL/67/10. It is therefore assumed that the unit had been replaced with a larger unit prior to this application.

Application AL/19/12 relates solely to unit D2 and was submitted by Mr Strudwick. The footprint of the mobile home was shown to be the same as on AL/94/11 (i.e. the same as it currently is). Photographs on the planning file show that the open porch structure was present on the front of the home.

Application AL/48/16 concerned the occupation of unit G. However, a consultation response from the Councils Site Licensing Officer stated 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".

REPRESENTATIONS

Representations received:

None.

Comments on Representations received:

N/A.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

ADC SOLICITOR -

"GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence.

I rely on you to tell me of any evidence indicating otherwise.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES [LDCs]

(1) Time: SS171 (1)-(3) and S191 TCPA 1990

The application is for material change of use to a dwelling so the time limit is 4 years under the above.

The time period is 7/7/13 - 7/7/17 i.e. 4 years to date of the application.

The evidence does satisfy this test.

Uncontradicted evidence shows - on balance of probability - works to convert were completed in

2010 and residence use started then in a dwelling annexed to the land.

I have at this date seen no contradictory evidence of this position. I explain why below.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

The evidence judged on a balance of probability and the above criteria is sufficient and is precise and unambiguous.

Para 3 NPPG says that ".. if an LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable, there is no good reason to refuse ... provided the applicant's evidence alone is sufficiently precise and unambiguous ...".

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

There is no evidence of an extant enforceable Enforcement Notice issued and affecting the Land

The evidence analysis with comments is

(1) Application - claims dwelling since 1 October 2010 - contrast Unit A was from 2013

(2) Plan - shows red edge around central plot to north of plot/unit A

(3) Invoices:

1 - I have compared and contrasted this bundle with that submitted for unit A and it appears they are different ie dated 2010 not 2013 albeit by much same/similar contractors but payers are Mr and Mrs Strudwick in all cases and all save Probuild relate to paddocks

2. Glitheroe &Keet plastering Oct 2010

3. GMS Electrics Sept 2010

4. Probuild

5 P Fairhead 4/10/110 plumber and heating engineers

6 interiors photos which you need to verify on site visit but show annexations to land by way of porch, steps, bathroom floor reinforced all which created attachments to land of former mobile home.

Comment - Probative and weighty. No contradictory evidence see by me. Probuild relates to a different site in Hawkhurst Kent and isn't relevant - though may relate to the mobile home now

on site and converted to affixed building on site - check size

(4) A Murdock statement 10 pages. Caravan installed Sept 2010. Works carried out 2010 - see receipts at No 3. Planning officer report dated November 2015 ref AL/123/16 quoted to effect structures on site weren't caravans inc Unit D. AL/123/16 is attached within this email/memo and copied below and full report attached. The structure exceeds size for a caravan/mobile and is annexed - fixed - to land by additions and structures. Is this a building? Is this a dwelling? Yes to both questions and your site visit will enable you to appreciate the "hard evidence" in situ

Comment - Hearsay - but bolstered by the evidence of documents listed at No 3 and no contradictions seen by me

Officer report ref AL/123/16/CLE;-

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".

It would be useful to have a direct statement from the occupiers/owners - the Strudwicks - but on its own the above evidence is sufficient on balance of probability because:-

[a] ive seen nothing contradictory
[b] the evidence supports a conversion due to structural works
[c] the evidence of a site visit and physical dimensions viewed on site plus any amendments / attachments / fixtures or annexations to land

Should all be capable of assessment from a visual inspection.

FURTHER EVIDENCE
I rely on you to show me any fresh evidence which may alter the tenor of this advice .

TERMS
1. grant
2. identify precise land boundaries on plan for extent of use.
3. describe accommodation ie number of rooms etc
4. describe any car parks or other curtilage uses/space by reference to a plan and/or verbal description of features on ground"

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 26 September 2017. Further comments from the Councils solicitor have been sought but no further advice has been received.

The submitted statutory declaration is by Mr Darren Searle who owns the whole site and who lives in unit B (the subject of AL/123/16/CLE). In respect of unit D2, Mr Searle states that the building was substantially complete by October 2010 and has been in continuous residential

occupation ever since. Mr Searle does not explicitly mention who occupied the unit but does state that the building works were carried out together with his son-in-law, Mr Brett Strudwick and the other evidence provided shows that Mr and Mrs Strudwick are the occupiers.

In respect of the comment about the Probuild evidence, the reverse of this document shows the mobile home present on the site (i.e. unit D2) and it is therefore considered that the home was brought onto the site from another site owned by Mr Ted Smith in Kent. The evidence describes the unit as a 4 part mobile home measuring 19.51m long by 6.706m wide.

LEGISLATIVE BACKGROUND

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

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.

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.

CONCLUSIONS

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.

There is evidence that unit D2 was brought onto the site in 4 parts in September 2010. There is important case law in respect of whether a unit is transported to a site in more than two parts and is then put together into two sections which are then joined together as the final act of assembly. Firstly, Carter v SSE & Carrick District Council (1994). In this case, it was decided that a 4 section structure was not a caravan. This was a decision of the Court of Appeal and binds any court apart from the Supreme Court. In a similar vein, in Byrne v Secretary of State for the Environment & Arun District Council (1997), a single judge decided that a log cabin was not a caravan because it comprised many lengths of timber which were joined together on site.

There is no evidence to suggest that the 4 parts were not assembled into two parts before being made into one. However, it is clear that there were 4 distinct sections and that these were transported separately. It is considered that it would be straining the language of Section 13(1) to say that a structure which started as 4 parts is a caravan.

The unit was then put together and made habitable by virtue of an electric connection, central heating system and plastering undertaken in September and October 2010. The various invoices are billed to Mr Brett Strudwick (husband of Mr Searle's daughter) and this suggests that they occupied the unit residentially. Furthermore, Mr Strudwick is listed as the applicant & owner for the AL/19/12 application concerning a proposed outbuilding.

The front page of the Probuild invoice suggests that the original unit was within the maximum dimensions of a caravan in that it states "Full construction of 64 foot (19.51m) by 22 foot (6.706m) 4 part mobile home as per specification enclosed". However, the specification referred to (on the 2nd page of the invoice) shows a floor plan with measurements that is actually 19.828m (65.06 feet) long by 7.32m (24.02 feet) wide. It is therefore clear that the mobile home delivered to the site was wider than the tolerances specified in the 1960 Act (as modified by the 2006 SI). It may be the case that this width of 7.32m, approx. 0.5m greater than the maximum permitted width, is the reason for the structure having to be delivered in 4 parts and this would therefore lend further weight to the case for granting this certificate.

It is also noted that the Council's Licensing officer stated in an email from November 2015 that unit D2 did not meet the definition of a caravan.

Therefore, it is considered that the property is no longer a mobile home/caravan and is in fact a building and has been for a number of years, likely since it was first brought onto the site in 2010. 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.

AL/77/17/CLE

RECOMMENDATION

APPROVE

The Arun District Council hereby certify that on 10/07/17, 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

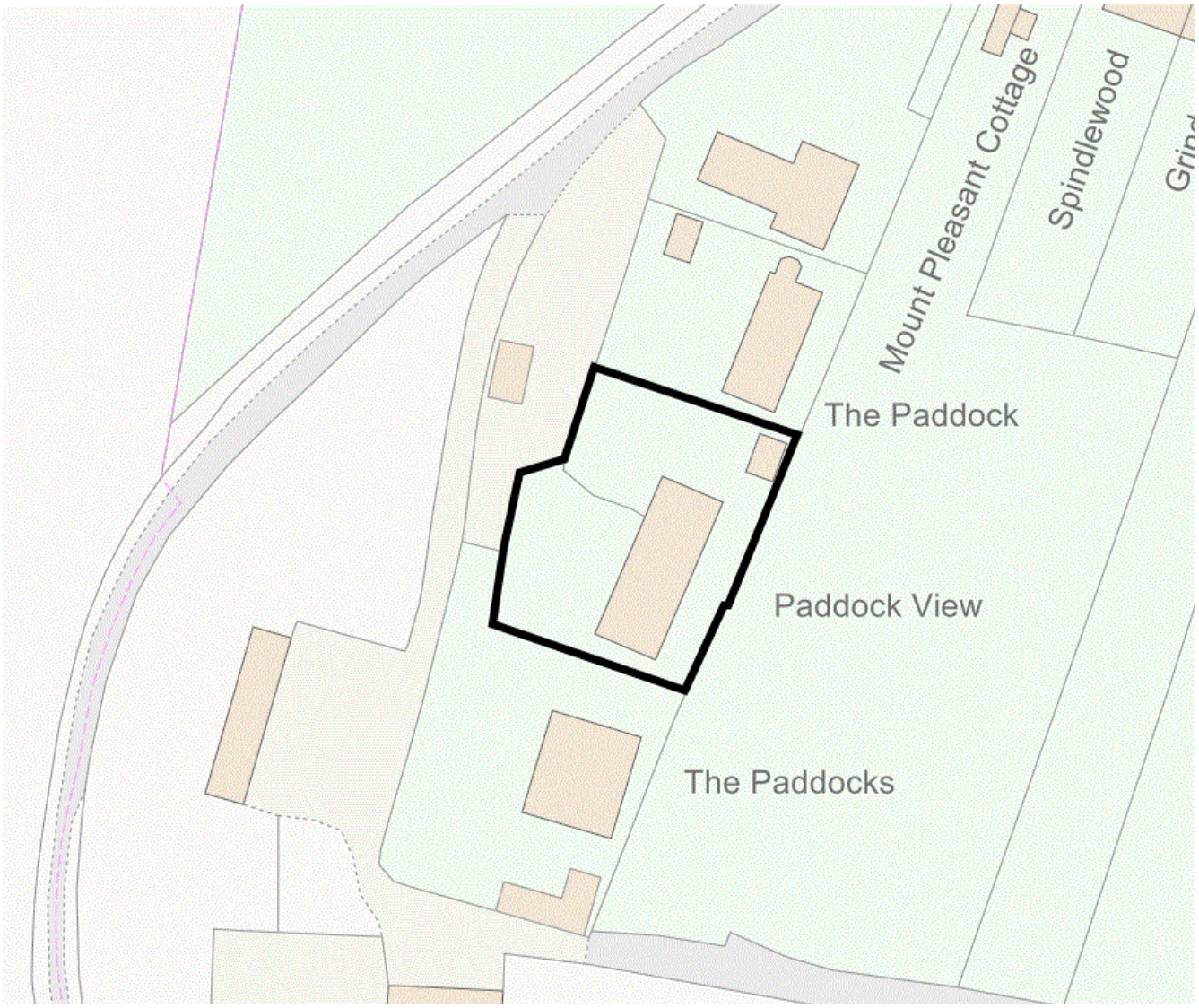
Use of the building and associated land as a residential dwelling under Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

SECOND SCHEDULE

The residential property known as Paddock View, The Paddocks, Northfields Lane, Westergate, Chichester, West Sussex, PO21 3UH (Unit D2).

EXTENT OF USE

Use of the property Paddock View (Unit D2) which (excluding bay windows) measures 19.8m long by 7.1m wide with an attached open front porch mounted on two pillars above a semi circular area of steps and comprises of L shaped lounge, kitchen, hallway, bathroom and 3 bedrooms one with attached dressing room. Externally, there are gardens on the northern & eastern sides and gravelled hardstanding for parking on the western side.



Based on the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Arun District Council 100018487.