

**IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND
REGULATIONS THERETO**

and

**IN THE MATTER OF AN APPLICATION FOR A CERTIFICATE OF LAWFUL USE
OR DEVELOPMENT IN RESPECT OF THE USE OF A BUILDING AS A SINGLE
DWELLINGHOUSE**

**WITH RESPECT TO LAND AT THE PADDOCKS, NORTHFIELD LANE,
ALDINGBOURNE**

UNIT A

QUALIFICATIONS AND EXPERIENCE

1. My name is Dr. Angus Dougal Stanislaw Murdoch and I am a Chartered Town Planner in private practice. My qualifications include a BA with Honours (Goldsmith's College, University of London, 1989), an MSC (Bristol University, 1996), a Ph. D (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). I am a Member of the Royal Town Planning Institute. I am widely published in the field, including in the Journal of Planning and Environment Law (2002 and 2008), and am co-author of the Planning Chapter in the lead text-book on the subject, *Gypsy and Traveller Law* (Commission for Racial Equality/Legal Action Group, 2008). I have also been called to give evidence to the House of Commons Select Committee in relation to this area of law and policy.

THE APPLICATION

2. This Certificate of Lawful Use or Development [CLUED] Application concerns the use of a building as a single dwelling house. In brief, that building was substantially complete by May 2013. Attached to this Statement are 3 Invoices: the first, dated 11th February 2013 from GMS Electrical states that the Invoice is to cover the "*removal of the existing consumer unit and install upgrade. To rewire extension of the property*"; the second Invoice is dated 25th March 2013 from Glitheroe and Keet Plastering who state that they had been "*plastering walls and ceilings of new build extension consisting of 3 bedrooms lounge and hallway*" ; the third,

from Pat Fairhead & Co is dated 24th April 2013 and confirms that the plumbing and heating work was completed by then. The original structure measured 36 ft by 20 prior to the extension being erected in 2013. That extension measures 19.8 ft by 37.7. It is clear that since the new extension was erected in 2013, the structure has not fallen with the Statutory definition of a caravan (discussed below) and that it has since then been a building for the purposes of s 336 of the 1990 Town and Country Planning Act. That building has been used as a dwelling house since that time. The residential use of that dwelling house commenced in 2013 and has continued unabated ever since. As the use has continued ever since that time in the absence of enforcement action, it is now immune from enforcement action and is lawful development. Accordingly, the Certificate as applied for should be granted.

3. S171B (2) of the Town and Country Planning Act 1990 provides that *"where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach."* As will be evidenced below, the change of use of the building to that as a dwelling house on the Application site has continued since April 2013 - well in excess of the requisite four year period in the Act - is consequently immune from enforcement action and is lawful development.
4. The Planning Encyclopaedia states that a useful way of testing the position in relation to lawful development is to ask what the outcome would be if an Enforcement Notice were issued and an Appeal made under Ground D of s171(1) of the Act: *"that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters."* The outcome should be the same in both cases. Once it is established that the use of the building as a dwelling house has continued for more than 4 years since the date of the breach, it is clear that an Enforcement Notice would be defeated on Appeal under Ground D.

SITE HISTORY

5. The Application site was granted planning permission for the *"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 work"* pursuant to AL/67/10. One of the 2 'mobile homes' referred to in that application as having *"extensions"* is the building which is the subject of this CLUED application. On page 4 of the Officer's Report for AL/67/10 we can see that the LPA was

already aware by then that the structure in question was no longer in fact a 'mobile home': "The Council's Solicitor confirms that **the two extended mobile homes by virtue of their size can no longer be defined as caravans per the Caravan Sites Act.**" Unit A is one of those "extended mobile homes" that "can no longer be defined as caravans per the Caravan Sites Act." One of the other such former mobile homes referred to was recently granted a CLUED by the LPA pursuant to AL/123/16/CLE. It follows that for the same reasons that that CLUED application was approved, so too should this one.

6. The legal definition of a caravan was established in the Caravan Sites and Control of Development Act 1960. It was modified in 1968 to include twin-unit mobile homes and again in 2006 when the sizes were increased.
7. 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..."

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

"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 and other devices; and

(B) 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".

Amendment of the definition of caravan 2006 (Permissible Additional Purposes) (England) Order 2006[4]^[1] Paragraph 3 of article 3 of the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (meaning of caravan) shall be amended:

"(a) Length (exclusive of any drawbar) 20m (65.6FT)

(b) Width: 6.8m (22.3ft)

(c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft)."

9. When the original part of the CLUED structure was first moved on the land it was still a mobile home and measured 36ft x 20ft. To that original structure has been added an extension that measures a further 19.8ft x 37.7 ft, with the building work commencing in April 2013 and being substantially completed in May 2013. Darren Searle and his son in laws did the building work: Brett Strudwick is a carpenter and Darren Searle did the brickwork as he is a builder. They both built the roof along with Steven Tate, Mr Searle's other son-in-law. The internal plastering work was done by a company Glitheroe and Keet. Harry Talbot was employed as a labourer.
10. As is made clear from the Site Layout Plan submitted with this Application, the CLUED structure exceeds the dimensions in the Act. In addition, the works done to the structure plainly bring it within the scope of s336 of the Town and Country Act 1990 as detailed below.
11. Before considering the case law, it is clear that this Application is on all-fours with that permitted by your authority pursuant to application reference AL/98/13/CLE from which:

"Do you agree with me that the mobile home is now a dwelling or does the existence of the S.106 mean that it is still a mobile home?"

REPLY - Crucially I have seen the photos, you showed me. They show a building with solid appearance with stucco and brick and pitched roof, unlike a traditional caravan/mobile home. I think these several background facts are more determinative than is one item namely the planning obligation. I have copied you some Inspector cases which cover whether a mobile home is now a "building" due to bricks and mortar and solid structural additions. I conclude this is a building due to all the above, and 4 years would apply. But, it appears the application should be refused because the applicant cannot prove a breach of condition due to dependants being in residence. And secondly (01/04/14): "I believe that S193 TCPA 1990 and Guidance [both NPPG and previous 10/97] says that CLEs can be "negotiated" and descriptions changed. So it appears they have altered or clarified their claim. I agree, that if they now say they are seeking a CLE based on 4 years use of the mobile home, as permanent, fixed dwelling, they will need evidence of siting, plus building works, fixtures, and "annexation" to the land, if it isn't there already.

Comments on Consultation responses:

The Council's solicitor has revised his original comments and agrees that the relevant period is 4 years based on the fact that the property is no longer a mobile home"

12. The Searle's CLUED structure has all – and more - of the features that made the structure above a building for planning purposes in terms of size, permanence and attachment to the ground, as well as also exceeding the dimensions of a 'caravan'.

Reasoning

13. In brief the argument runs thus: what kind of structure is it that is the subject of this application? By reference to the legislation, attendant case law and matters of fact relating to the Appeal site that will also be addressed below, it is submitted that the structure is a 'building' (s336(1) Town and Country Planning Act 1990). A further question is then begged by that answer: what has that building been used for? The answer in this case is, of course, for residential purposes – that is, as a 'dwelling house.' As the building has been used as a dwelling house for more than 4

years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B) (2) the 1990 Act refers) and the Application should be allowed.

14. Section 171B (2) of the Act provides that *"no enforcement action may be taken in respect of a breach of planning control after the end of the period of four years beginning with the date of the breach."* As has been evidenced in this Application, the use of the Application structure as a dwelling house has continued for well in excess of the requisite 4 year period in s171B (4) of the Act, is immune from enforcement action and is lawful development.

Question 1: is the structure a 'building'?

15. Section 336 (1) of the Town and Country Planning Act 1990 states that the term *"building includ[es] any structure or erection, and any part of a building, as so defined..."*
16. At paragraph 55.10 the Encyclopaedia of Planning refers to the case of Barvis Ltd v Secretary of State and Another (1971) 22 P&CR 710 where the Court considered whether a structure on wheels (in that case a mobile crane) could amount to a 'building' in the statutory sense of that term, holding that it could, even in circumstances where it retained a limited degree of mobility, provided that its erection *"changed the physical character of the land."*
17. In reaching this conclusion, Barvis referred to Cheshire County Council v Woodward [1962] 2 QB 126; 13 P&CR 157 which involved a mobile hopper and a mobile conveyor, both of which were on wheels and were, theoretically at least, fully mobile in the sense that, given a sufficiently smooth surface, they could be moved in one piece for any distance in any direction:

"...the mere fact that it can be moved and is not affixed does not determine the matter. It seems to me the position is analogous to the problems with which one is faced in dealing with fixtures when deciding what fixtures pass with the freehold. There is one test: you look at the erection, equipment, plant whatever it is, and ask: in all the circumstances is it to be treated as part of the realty? So here, as it seems to me, under this Act one must look at the whole circumstances, including what is undoubtedly extremely relevant, the degree of permanency with which it is affected... the structures were attached to the land only by their own weight ... and although both structures were on wheels their situation on the site made them virtually immovable."

18. *Barvis* then goes on to cite from *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd [1949]* "...the description of buildings or structures... suggests built or constructed things of substantial size: I think of such size that they either have been or would normally be built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament i.e. things once installed on the hereditament would normally remain in situ and only be moved by a process amounting to pulling down or taking to pieces. I do not mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings...because by some feat of engineering or navigation it is brought to the site in one piece...The question whether the thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure...Nor can I regard the fact that the thing has a limited degree of motion in use...necessarily prevents it from being a structure...if otherwise it possesses the characteristics of such..."
19. The fact that the Application structure has remained immobilised for so many years (since at least 2013) "...suggests some degree of permanence in relation to the hereditament [since it has been] installed on the hereditament [it has] remain[ed] in situ..."
20. In relation to the factor of size, in the case of *R v Swansea CC, ex parte Elitestone Ltd [1993] 2PLR 65* the Court of Appeal held that self-built wooden chalets – many of which "little more than sheds" – amounted to 'buildings' in the statutory sense: even though "they were not incorporated into the realty ... [they] were suspended on pillars and had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years and its fulfillment had inevitably affected the physical quality of the land. In those circumstances, the only conclusion as a matter of objective judgment was that the chalets were structures or erections and thus buildings within the definition in section 336 (1)..."
21. The Application structure "had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years..." - in this case since at least 2013. Moreover "its fulfillment had inevitably affected the physical quality of the land" in a way which clearly indicates of a "sense of permanence.": it is submitted that the legislation and attendant case law supports the argument that the Application structure is a 'building.'

22. It is submitted that the proper approach to be adopted when considering whether this structure is a building/structure for the purposes of section 171B of the Town and Country Planning Act 1990 is set out in *R ex parte Hall Hunter Partnership v Tuesley Farm Campaign/Residents Group* [2006] EWHC 3482 (Admin) case at paragraph 66 as follows:

"For the purpose of considering ground 1, it is unnecessary to either set out the statutory framework or to list the relevant authorities because Mr Straker accepted that the Inspector's "self direction" in paragraphs 35 to 40 of the decision letter as to the legal principles to be applied could not be faulted. Under the heading "Whether 'Development'", the Inspector said:

"35. Section 57 of the 1990 Act (as amended) indicates that 'planning permission' is required for the carrying out of 'development' of 'land'. By s.336 (1), 'land' includes a 'building', the definition of which '... includes any structure or erection...' The 1990 Act (as amended) contains no further definition of 'structure' and the term would need to be given its ordinary meaning: 'erection' (in relation to 'buildings') includes extension, alteration and re-erection. By s.171A (1) (a), the carrying out of 'development' without the required 'planning permission' constitutes a breach of planning control.

36. Section 55(1) defines 'development', for the purposes of the 1990 Act (as amended), as meaning '... the carrying out of building, engineering, mining or other operations in, on, over or under any land, or the making of any material change in the use of any buildings or other land'. By s.55(1A), '... building operations' includes - (a) demolition of buildings; (b) re-building; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder'.¹

...

38. It is common ground between the main parties that Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC (No.2) [2000] 2 PLR 102; [2000] JPL 1025; [2000] ECGS 43

¹ In that respect I note that the Smths used a carpenter to convert the farm office into their dwelling.

provides valuable guidance in the interpretation of the meaning of 'development'. In that case, it was held that whether 'building operations' have occurred involves the application of a legal test.

39. *That test is set out in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd [1949] 1 KB 385; three factors - size, permanence and degree of physical attachment - were **relevant** [that is, not necessarily individually determinative] in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in Barvis Ltd v Secretary of State for the Environment [1971] 22 P&CR 710.*

40. *In Skerritts, Pill LJ approved the approach adopted by Bridge J in Barvis; the approach to the question of whether there had been a building operation was to consider, first, whether there was a building. If there was a building, applying the test set out in Cardiff Rating Authority, then what had created it was a building operation. The Courts have held that all of the circumstances have to be taken into account."*

In this case the structure is physically attached to the land by more than its own weight and case law has established that attachment to the land solely by a structure's own weight is sufficient to demonstrate that a structure is a building. Paragraph 44 of the *Market Cafe* case provides:

"Two propositions emerge from this passage: first, it is important to consider whether the operation changes the physical character of the land; secondly, the fact that a structure fixed to land is mobile is not determinative. It may still be part of a building operation".

23. From the above authorities it is submitted that by May 2013 a building had been erected. The Applicants then commenced the residential use of that building and have continued to use it residentially ever since.

Question 2 : is this building a dwelling house?

24. It now becomes necessary to consider the law and jurisprudence in relation to dwelling houses, a matter to which we now turn. Perhaps unsurprisingly, there is much law and case law on this subject. The first thing to establish is: what is meant by 'dwelling house'? In Moore v SSE and N Forest DC 1998 77 P & CR 114 @ 119, the Court of Appeal cited with approval Gravesham BC v Secretary of State for the Environment (1982) 47 P&CR 142 that "*the distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day to day private domestic existence.*" In this case, the Application structure does indeed provide the facilities necessary for everyday existence, including separate bedrooms, a fully fitted bathroom, a kitchen equipped with cooker, sink, running water, workspaces and fitted cupboards, a dining area with table and chairs and sitting room with a three piece suite. It is clear that the Application structure has afforded the Applicants and their family the facilities required for day to day domestic existence since July 2009 at the latest. Thus the Application proposal draws support from Moore and Gravesham
25. In Gravesham the Court found that a modest chalet whose "...external measurements are 20 feet three inches by 17 feet... had three rooms: a living room with a fireplace, a kitchen and a bedroom [with] neither bathroom nor a w.c. ..." nevertheless constituted such facilities which rendered the building a dwelling house. In this case the dimensions are far in excess of that in Gravesham.

Conclusions

26. It is submitted that the Application structure in question is, due to its size, permanence and attachment to the ground, a building: by reference to the legislation, attendant case law and matters of fact. As the building has been used as a single dwelling house for more than 4 years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B)(2) of the 1990 Act. In these circumstances, the Local Planning Authority is respectfully invited to allow the Application and grant the certificate sought.

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the third, from Pat Fairhead & Co is dated 24th April 2013 and confirms that the plumbing and heating work was completed by then. The original structure measured 36 ft by 20 prior to the extension being erected in 2013. That extension measures 19.8 ft by 37.7. It is clear that since the new extension was erected in 2013, the structure has not fallen with the Statutory definition of a caravan (discussed below) and that it has since then been a building for the purposes of s 336 of the 1990 Town and Country Planning Act. That building has been used as a dwelling house since that time. The residential use of that dwelling house commenced in 2013 and has continued unabated ever since. As the use has continued ever since that time in the absence of enforcement action, it is now immune from enforcement action and is lawful development. Accordingly, the Certificate as applied for should be granted.

3. S171B (2) of the Town and Country Planning Act 1990 provides that *“where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.”* As will be evidenced below, the change of use of the building to that as a dwelling house on the Application site has continued since April 2013 - well in excess of the requisite four year period in the Act - is consequently immune from enforcement action and is lawful development.
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SITE HISTORY

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this CLUED application. On page 4 of the Officer's Report for AL/67/10 we can see that the LPA was already aware by then that the structure in question was no longer in fact a 'mobile home': *"The Council's Solicitor confirms that the two extended mobile homes by virtue of their size can no longer be defined as caravans per the Caravan Sites Act."* Unit A is one of those "extended mobile homes" that *"can no longer be defined as caravans per the Caravan Sites Act."* One of the other such former mobile homes referred to was recently granted a CLUED by the LPA pursuant to AL/123/16/CLE. It follows that for the same reasons that that CLUED application was approved, so too should this one.

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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”.

Amendment of the definition of caravan 2006 (Permissible Additional Purposes) (England) Order 2006[4]□ Paragraph 3 of article 3 of the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (meaning of caravan) shall be amended:

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10. As is made clear from the Site Layout Plan submitted with this Application, the CLUED structure exceeds the dimensions in the Act. In addition, the works done to the structure plainly bring it within the scope of s336 of the Town and Country Act 1990 as detailed below.
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12. The Searle's CLUED structure has all – and more - of the features that made the structure above a building for planning purposes in terms of size, permanence and attachment to the ground, as well as also exceeding the dimensions of a 'caravan'.

Reasoning

13. In brief the argument runs thus: what kind of structure is it that is the subject of this application? By reference to the legislation, attendant case law and matters of fact relating to the Appeal site that will also be addressed below, it is submitted that the structure is a

'building' (s336(1) Town and Country Planning Act 1990). A further question is then begged by that answer: what has that building been used for? The answer in this case is, of course, for residential purposes – that is, as a 'dwelling house.' As the building has been used as a dwelling house for more than 4 years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B) (2) the 1990 Act refers) and the Application should be allowed.

14. Section 171B (2) of the Act provides that *“no enforcement action may be taken in respect of a breach of planning control after the end of the period of four years beginning with the date of the breach.”* As has been evidenced in this Application, the use of the Application structure as a dwelling house has continued for well in excess of the requisite 4 year period in s171B (4) of the Act, is immune from enforcement action and is lawful development.

Question 1: is the structure a 'building'?

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“...the mere fact that it can be moved and is not affixed does not determine the matter. It seems to me the position is analogous to the problems with which one is faced in dealing with fixtures when deciding what fixtures pass with the freehold. There is one test: you look at the erection, equipment, plant whatever it is, and ask: in all the circumstances is it to be treated as part of the realty? So here, as it seems to me, under this Act one must

look at the whole circumstances, including what is undoubtedly extremely relevant, the degree of permanency with which it is affected... the structures were attached to the land only by their own weight ... and although both structures were on wheels their situation on the site made them virtually immovable.”

18. Barvis then goes on to cite from Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd [1949] “...the description of buildings or structures... suggests built or constructed things of substantial size: I think of such size that they either have been or would normally be built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament i.e. things once installed on the hereditament would normally remain in situ and only be moved by a process amounting to pulling down or taking to pieces. I do not mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings... because by some feat of engineering or navigation it is brought to the site in one piece... The question whether the thing is or is not physically attached to the hereditament is, I think, certainly a relevant consideration but I cannot regard the fact that it is not so attached as being in any way conclusive against its being a building or structure... Nor can I regard the fact that the thing has a limited degree of motion in use... necessarily prevents it from being a structure... if otherwise it possesses the characteristics of such... ”
19. The fact that the Application structure has remained immobilised for so many years (since at least 2013) “...suggests some degree of permanence in relation to the hereditament [since it has been] installed on the hereditament [it has] remain[ed] in situ... ”
20. In relation to the factor of size, in the case of R v Swansea CC, ex parte Elitestone Ltd [1993] 2PLR 65 the Court of Appeal held that self-built wooden chalets – many of which “little more than sheds” – amounted to ‘buildings’ in the statutory sense: even though “they were not incorporated into the realty ... [they] were suspended on pillars and had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years and its fulfillment had inevitably affected the physical quality of the land. In those circumstances, the only conclusion as a matter of objective judgment was that the chalets were structures or erections and thus buildings within the definition in section 336 (1)... ”

21. The Application structure *“had been erected with a prospect of permanence. That prospect had hitherto been fulfilled over many years...”* - in this case since at least 2013. Moreover *“its fulfillment had inevitably affected the physical quality of the land”* in a way which clearly indicates of a *“sense of permanence.”*: it is submitted that the legislation and attendant case law supports the argument that the Application structure is a *‘building.’*
22. It is submitted that the proper approach to be adopted when considering whether this structure is a building/structure for the purposes of section 171B of the Town and Country Planning Act 1990 is set out in *R ex parte Hall Hunter Partnership v Tuesley Farm Campaign/Residents Group* [2006] EWHC 3482 (Admin) case at paragraph 66 as follows:

“For the purpose of considering ground 1, it is unnecessary to either set out the statutory framework or to list the relevant authorities because Mr Straker accepted that the Inspector's "self direction" in paragraphs 35 to 40 of the decision letter as to the legal principles to be applied could not be faulted. Under the heading "Whether 'Development'", the Inspector said:

"35. Section 57 of the 1990 Act (as amended) indicates that 'planning permission' is required for the carrying out of 'development' of 'land'. By s.336 (1), 'land' includes a 'building', the definition of which '... includes any structure or erection...' The 1990 Act (as amended) contains no further definition of 'structure' and the term would need to be given its ordinary meaning; 'erection' (in relation to 'buildings') includes extension, alteration and re-erection. By s.171A (1) (a), the carrying out of 'development' without the required 'planning permission' constitutes a breach of planning control.

36. Section 55(1) defines 'development', for the purposes of the 1990 Act (as amended), as meaning '... the carrying out of building, engineering, mining or other operations in, on, over or under any land, or the making of any material change in the use of any buildings or other land'. By s.55(1A), '... building operations' includes - (a) demolition of buildings; (b) re-building; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a

builder'.¹

...

38. It is common ground between the main parties that Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC (No.2) [2000] 2 PLR 102; [2000] JPL 1025; [2000] ECGS 43 provides valuable guidance in the interpretation of the meaning of 'development'. In that case, it was held that whether 'building operations' have occurred involves the application of a legal test.

39. That test is set out in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd [1949] 1 KB 385; three factors - size, permanence and degree of physical attachment - were **relevant** [that is, not necessarily individually determinative] in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in Barvis Ltd v Secretary of State for the Environment [1971] 22 P&CR 710.

40. In Skerrits, Pill LJ approved the approach adopted by Bridge J in Barvis; the approach to the question of whether there had been a building operation was to consider, first, whether there was a building. If there was a building, applying the test set out in Cardiff Rating Authority, then what had created it was a building operation. The Courts have held that all of the circumstances have to be taken into account."

In this case the structure is physically attached to the land by more than its own weight and case law has established that attachment to the land solely by a structure's own weight is sufficient to demonstrate that a structure is a building. Paragraph 44 of the *Market Cafe* case provides:

"Two propositions emerge from this passage: first, it is important to consider whether the operation changes the physical character of the land; secondly, the fact that a

¹ In that respect I note that the Smths used a carpenter to convert the farm office into their dwelling.

structure fixed to land is mobile is not determinative. It may still be part of a building operation”.

23. From the above authorities it is submitted that by May 2013 a building had been erected. The Applicants then commenced the residential use of that building and have continued to use it residentially ever since.

Question 2 : is this building a dwelling house?

24. It now becomes necessary to consider the law and jurisprudence in relation to dwelling houses, a matter to which we now turn. Perhaps unsurprisingly, there is much law and case law on this subject. The first thing to establish is: what is meant by ‘dwelling house’? In Moore v SSE and N Forest DC 1998 77 P & CR 114 @ 119, the Court of Appeal cited with approval Gravesham BC v Secretary of State for the Environment (1982) 47 P&CR 142 that “the distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day to day private domestic existence.” In this case, the Application structure does indeed provide the facilities necessary for everyday existence, including separate bedrooms, a fully fitted bathroom, a kitchen equipped with cooker, sink, running water, workspaces and fitted cupboards, a dining area with table and chairs and sitting room with a three piece suite. It is clear that the Application structure has afforded the Applicants and their family the facilities required for day to day domestic existence since July 2009 at the latest. Thus the Application proposal draws support from Moore and Gravesham
25. In Gravesham the Court found that a modest chalet whose “... external measurements are 20 feet three inches by 17 feet... had three rooms: a living room with a fireplace, a kitchen and a bedroom [with] neither bathroom nor a w.c. ...” nevertheless constituted such facilities which rendered the building a dwelling house. In this case the dimensions are far in excess of that in Gravesham.

Conclusions

26. It is submitted that the Application structure in question is, due to its size, permanence and attachment to the ground, a building: by reference to the legislation, attendant case law and matters of fact. As the building has been used as a single dwelling house for

more than 4 years without enforcement action having been taken against that use, it is lastly submitted that it is now immune from enforcement action (s171(B)(2) of the 1990 Act. In these circumstances, the Local Planning Authority is respectfully invited to allow the Application and grant the certificate sought.

Application for a Lawful Development Certificate for an Existing use or operation
or activity including those in breach of a planning condition.

Town and Country Planning Act 1990: Section 191 as amended by section 10 of
the Planning and Compensation Act 1991.

Town and Country Planning (Development Management Procedure) (England) Order 2015

You can complete and submit this form electronically via the Planning Portal by visiting www.planningportal.gov.uk/apply

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Please complete using block capitals and black ink.

It is important that you read the accompanying guidance notes as incorrect completion will delay the processing of your application.

1. Applicant Name and Address

Title: **MR + MRS** First name:

Last name: **SEARLE**

Company (optional):

Unit: House number: House suffix:

House name: **THE PADDOCK**

Address 1: **NORTHFIELD LANE**

Address 2: **ALDINGBOURNE**

Address 3:

Town:

County:

Country:

Postcode: **PO20 3UH**

2. Agent Name and Address

Title: **DR** First name: **ANDREW**

Last name: **MURDOCH**

Company (optional): **MURDOCH PLANNING LTD**

Unit: House number: House suffix:

House name: **P.O. Box 71**

Address 1:

Address 2:

Address 3:

Town: **ILCMINSTON**

County: **SOMERSET**

Country:

Postcode: **TA19 0WF**

3. Site Address Details

Please provide the full postal address of the application site.

Unit: House number: House suffix:

House name:

Address 1:

Address 2:

Address 3:

Town:

County:

Postcode (optional):

Description of location or a grid reference.
(must be completed if postcode is not known):

Easting: Northing:

Description:

4. Pre-application Advice

ARUN DISTRICT COUNCIL AL/79/17/CLE

Has assistance or prior advice been sought from the local authority about this application? ☐ Yes ☒ No

If Yes, please complete the following information about the advice you were given. (This will help the authority to deal with this application more efficiently).

Please tick if the full contact details are not known, and then complete as much as possible: ☐

Officer name:

Reference:

Date (DD/MM/YYYY):
(must be pre-application submission)

Details of pre-application advice received?

5. Lawful Development Certificate - Interest in Land

Please state the applicant's interest in the land:

Owner: ☒ Yes ☐ No Lessee: ☐ Yes ☐ No Occupier: ☐ Yes ☐ No

If Yes to Lessee or Occupier please give details of the owner and state whether they have been informed in writing of this application:

Name	Address	Have they been informed in writing of the application	
		Yes	No
		☐	☐

If No to all the above, please give name and address of anyone you know who has an interest in the land:

Name	Address	State the nature of their interest (if known)	State whether they have been informed about this application		If No, please explain why not
			Yes	No	
			☐	☐	
			☐	☐	
			☐	☐	
			☐	☐	

6. Authority Employee / Member

With respect to the Authority, I am:

- (a) a member of staff (c) related to a member of staff
(b) an elected member (d) related to an elected member

Do any of these statements apply to you?

☐ Yes ☒ No

If Yes, please provide details of the name, relationship and role

7. Description of Use, Building Works or Activity

Please state for which of these you need a lawful development certificate/building works (you must tick at least one option):

An existing use: ☒ Yes ☐ No

Existing building works: ☐ Yes ☐ No

An existing use, building work or activity in breach of a condition: ☐ Yes ☐ No

Being a use, building works or activity which is still going on at the date of this application

If Yes to either 'an existing use' or 'an existing use in breach of a condition', please state which one of the Use Classes of the Town and Country Planning (Use Classes) Order 1987 (as amended) the use relates to:

8. Description of Existing Use, Building Works or Activity

What is the existing site use(s) for which the certificate of lawfulness is being sought? Please fully describe each use and state which part of the land the use relates to:

THE USE OF A BUILDING AS A DWELLING HOUSE

9. Grounds For Application For A Lawful Development Certificate

Please state under what grounds is the certificate sought (you must tick at least one box):

- ☐ The use began more than 10 years before the date of this application.
- ☐ The use, building works or activity in breach of condition began more than 10 years before the date of this application.
- ☐ The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years.
- ☐ The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
- ☒ The use as a single dwelling house began more than four years before the date of this application.
- ☐ Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

If the certificate is sought on 'Other' grounds please give details:

If applicable, please give the reference number of any existing planning permission, lawful development certificate or enforcement notice affecting the application site. Include its date and the number of any condition being breached:

Reference Number: AL/123/16/ CLE Condition Number: Date (DD/MM/YYYY): (must be pre application submission)

Please state why a Lawful Development Certificate should be granted: ON ADJACENT PLOT

10. Information In Support Of A Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed: 01/05/2013 (date must be pre-application submission) (DD/MM/YYYY)

In the case of an existing use or activity in breach of conditions has there been any interruption? ☐ Yes 2/4 ☐ No

If Yes, please provide details of the dates, duration and any discontinuance of the development which is the subject of this application. If your application is based on the claim that a use or activity has been ongoing for a period of years, please state exactly when any interruption occurred:

PLEASE REFER TO STATEMENT IN SUPPORT

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought? ☐ Yes 2/4 ☐ No

If Yes please provide details:

10. Information In Support Of A Lawful Development Certificate (Continued) - Residential Information

Does the application for a Certificate relate to a residential use where the number of residential units has changed? ☒ Yes ☐ No
If Yes, please complete the following table:

Proposed Housing

	Number of Bedrooms					Total
	1	2	3	4+	Unknown	
Market Housing						
Houses						1
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Market Housing Total (a+b+c+d+e+f+g)=						1

	1	2	3	4+	Unknown	
Social Rented Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Social Rented Housing Total (a+b+c+d+e+f+g)=						

	1	2	3	4+	Unknown	
Intermediate Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Intermediate Housing Total (a+b+c+d+e+f+g)=						

	1	2	3	4+	Unknown	
Key Worker Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Key Worker Housing Total (a+b+c+d+e+f+g)=						

Proposed Housing Grand Total (A+B+C+D)=

Existing Housing

	Number of Bedrooms					Total
	1	2	3	4+	Unknown	
Market Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Market Housing Total (a+b+c+d+e+f+g)=						

	1	2	3	4+	Unknown	
Social Rented Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Social Rented Housing Total (a+b+c+d+e+f+g)=						

	1	2	3	4+	Unknown	
Intermediate Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Intermediate Housing Total (a+b+c+d+e+f+g)=						

	1	2	3	4+	Unknown	
Key Worker Housing						
Houses						
Flats & Maisonettes						
Live-Work Units						
Cluster Flats						
Sheltered Housing						
Bedsit/Studios						
Unknown						
Key Worker Housing Total (a+b+c+d+e+f+g)=						

Existing Housing Grand Total (E+F+G+H)=

TOTAL NET GAIN or LOSS of RESIDENTIAL UNITS (Proposed Housing Grand Total - Existing Housing Grand Total):

11. Planning Application Requirements - Checklist

Please read the following checklist to make sure you have sent all the information in support of your proposal. Failure to submit all information required will result in your application being deemed invalid. It will not be considered valid until all information required by the Local Planning Authority has been submitted.

The burden of proof in a Lawful Development Certificate is firmly with the applicant and therefore sufficient and precise information should be provided.

The original and 3 copies of a completed dated application form:



The original and 3 copies of such evidence verifying the information included in the application as you can provide:



The original and 3 copies of a plan which identifies the land to which the application relates drawn to an identified scale and showing the direction of North:



The correct fee:



12. Declaration

I/we hereby apply for a Lawful Development Certificate as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

Signed - Applicant

[Redacted Signature]

Date (DD/MM/YYYY):

07/07/17

(date cannot be pre-application submission)

WARNING:

The amended section 194 of the 1990 Act provides that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive. Section 193(7) enables the authority to revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

13. Applicant Contact Details

Telephone numbers

Country code:

National number:

Extension number:

[Redacted]

[Redacted]

[Redacted]

Country code:

Mobile number (optional):

[Redacted]

[Redacted]

Country code:

Fax number (optional):

[Redacted]

[Redacted]

Email address (optional):

[Redacted]

14. Agent Contact Details

Telephone numbers

Country code:

National number:

Extension number:

[Redacted]

[Redacted]

[Redacted]

Country code:

Mobile number (optional):

[Redacted]

[Redacted]

Country code:

Fax number (optional):

[Redacted]

[Redacted]

Email address (optional):

[Redacted]

15. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

☐ Yes

☒ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

☒ Agent

☐ Applicant

☐ Other (if different from the agent/applicant's details)

If Other has been selected, please provide:

Contact name:

[Redacted]

Telephone number:

[Redacted]

Email address:

[Redacted]

My name is Darren Searle and I state as follows:

1. I live in Unit 1 at the Paddocks, Northfield Lane, Aldingbourne.....I have lived here since 2004. The wider Paddocks site was granted planning permission for the *"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 work"* pursuant to AL/67/10. One of the 2 'mobile homes' referred to in that application as having "extensions" is Unit 1, this being the building which is the subject of this CLUED application. On page 4 of the Officer's Report for AL/67/10 we can see that the LPA was already aware by then that Unit 1 was no longer in fact a 'mobile home': *"The Council's Solicitor confirms that the two extended mobile homes by virtue of their size can no longer be defined as caravans per the Caravan Sites Act."*

1. The legal definition of a caravan was established in the Caravan Sites and Control of Development Act 1960. It was modified in 1968 to include twin-unit mobile homes and again in 2006 when the sizes were increased.

1. 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..."

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

"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 and other devices; and

(B) 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”.

Amendment of the definition of caravan 2006 (Permissible Additional Purposes) (England) Order 2004 Paragraph 3 of article 3 of the Social Landlords (Permissible Additional Purposes) (England) Order 2006 (meaning of caravan) shall be amended:

“(a) Length (exclusive of any drawbar) 20m (65.6FT)

(b) Width: 6.8m (22.3ft)

(c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft).”

1. When Unit 1 was first moved on the land in February 2004 it was still a mobile home that measured 36ft x 20ft, to which had been added the first extension that measured a further 22ft x 12ft. Both the former mobile home and the first extension are clearly visible in the attached photographs in Appendix 1. The larger extension was built in May 2009 and I moved into it in July 2009. The construction process involved creating a concrete base with brick work that was built up to the existing floor level of the former mobile home (as shown in the

photographs in Appendix 1). Timber framing was used for the walls and floor, then the roof was put on and integrated into the other existing 2 roofs. My sons in law – Mr Brett Strudwick and Mr Steve Tate - and I did the building work: Brett is a carpenter and I did the brickwork as I am a builder. Brett and I both built the roof along with Steven. The internal plastering work was done by a company Glitheroe and Keet. Mr Harry Talbot was employed as a labourer.

1. The overall structure measures 11.3m by 12.3m which exceeds the dimensions of a 'caravan' in the Act. In addition, the works done to the structure plainly bring it within the scope of s336 of the Town and Country Act 1990. In their email of 16th January 2017 the LPA accept that the structure is a building.
1. I have lived in Unit 1 since it was first erected on the site in 2004 and continue to live in to this day. I attach at Appendix 2 Council Tax Bills for Unit 1 for the years 2014 and 2015. Unit 1 is subject to Council Tax in its own right as a separate residential dwelling.

AND I make this solemn declaration contentiously believing the same to be true and by virtue of the Statutory Declarations Act of 1835.

DECLARED at 40 Sudley Rd . Bognor Regis

In the County of West Sussex -

This 8th day of February 2017

Before me

Solicitor

CHAMBERLAIN MARTIN SOLICITORS
40 SUDLEY ROAD
BOGNOR REGIS
WEST SUSSEX PO21 1ES

GMS Electrical
21 Finch Gardens
Bognor Regis
W.SX PO22 9EQ



NAPIT

Reg.No 20833

11th February 2013

Mr & Mrs Gibbs

2 The Paddock
Northfields Lane
Westergate
Chichester
PO20 3UH

To remove existing consumer unit and install upgrade. To rewire extension of the property.

For the Sum of £900.00 Labour and Materials.

Payment of receipt of invoice please.

All cheques made payable to GMS Electrical.

Thank you for your custom

GLITHEROE AND KEET PLASTERING

3 BUCKSHAM AVENUE

BOGNOR REGIS

PO21 5DT



Bevan Gibbs

**The Paddock
Westergate
Chichester
PO20 3UH**

25TH March 2013

Invoice for plastering walls and ceilings of new build extension consisting of 3 bedrooms, lounge and hallway.

**Total Price
£1000.00**

PAT FAIRHEAD & co



Plumbing and Heating Engineers NO 505594

56 Higheroft Crescent
Bognor Regis
West Sussex
PO22 8DU

27th April 2013

● Invoice

MR & MRS GIBBS

2 THE PADDOCK

WESTON 4.77P

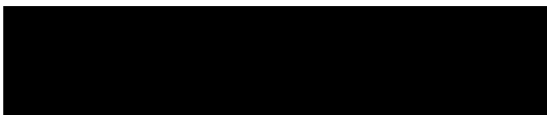
PO20 3UH

Parts £1700

Labour £900

Total £2600

● TO FIT COMBI BOILER & CENTRAL HEATING SYSTEM


Mr P A Fairhead

10 JUL 2017

From: Angus Murdoch
Sent: Saturday, July 8, 2017 11:01 AM
To: planning@arun.gov.uk
Subject: Searle CLUED applications for Units A, C and D2 The Paddocks, Northfield Lane, Aldingboure
Attachments: Searle Unit A CLUED app 2017.pdf; Searle Unit A Statement in Support of the CLUED 2017.docx; Searle Unit C stable Statement in Support of the CLUED 2017.docx; Searle D2 Statement in Support of the CLUED 2017.docx
Importance: High

Dear Planning

In the post you will receive 3 separate CLUED applications for Mr and Mrs Searle which relate to buildings used as dwelling houses on their property.

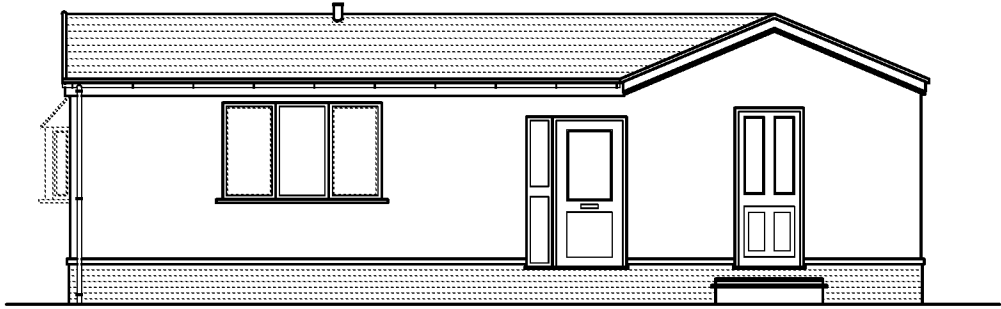
On review I noted that I had only included copies and not the original signed form of the Unit A application form and therefore I am posting that separately today by Signed For post. I am also attaching a scan of the Unit A application as well as Word versions of the Statements in support of each Unit (hard copies were sent in the post yesterday).

I would be grateful if you would kindly confirm safe receipt.

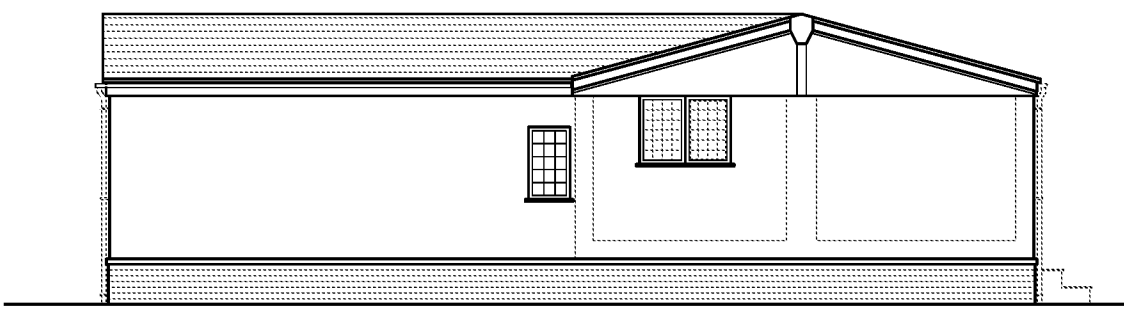
Many thanks

Angus

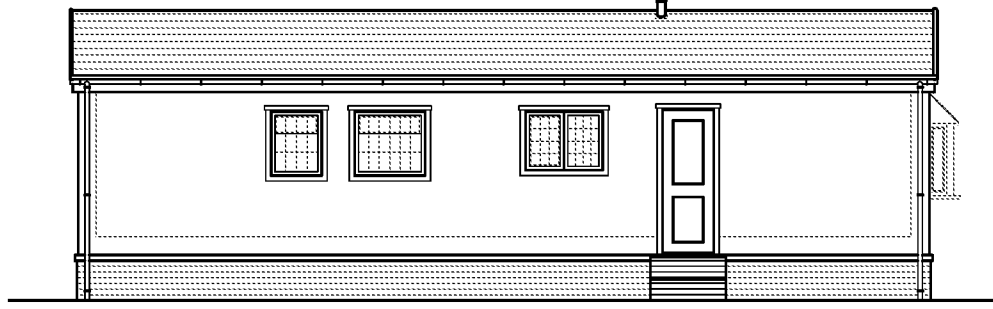
Dr Angus Murdoch MRTPI
Director
Murdoch Planning Limited
PO Box 71
Ilminster
Somerset TA19 0WF



South Elevation @ 1:100

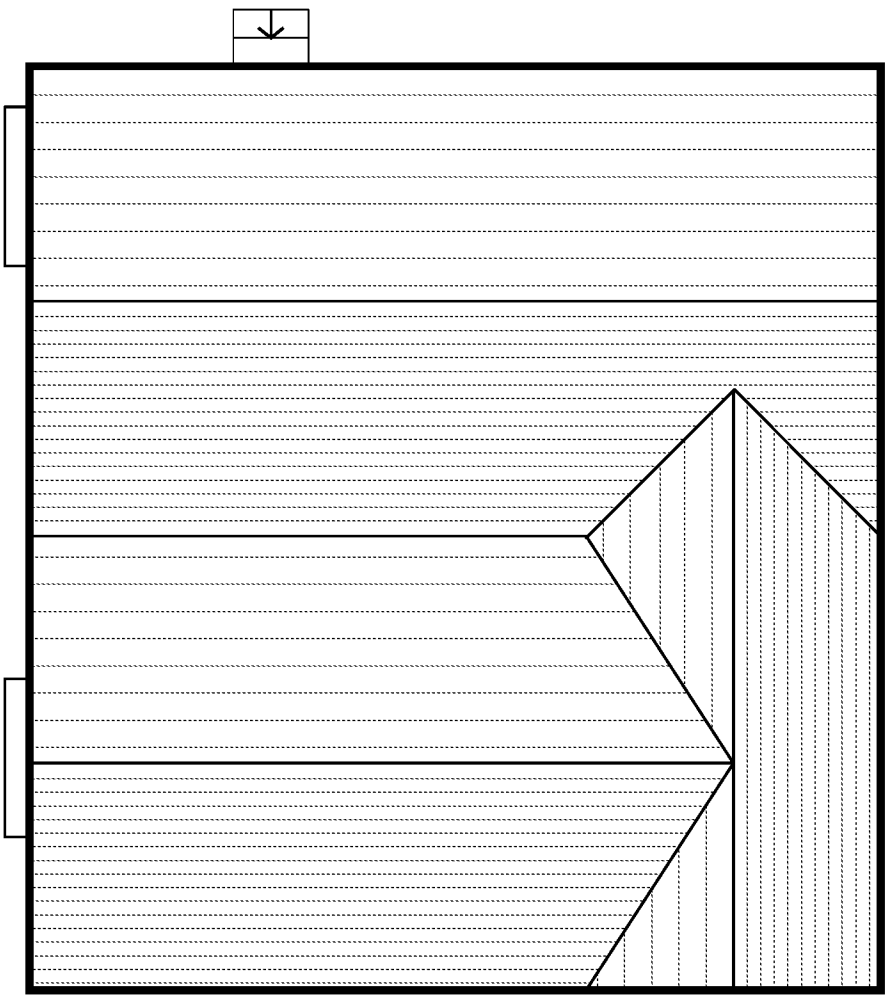


East Elevation @ 1:100

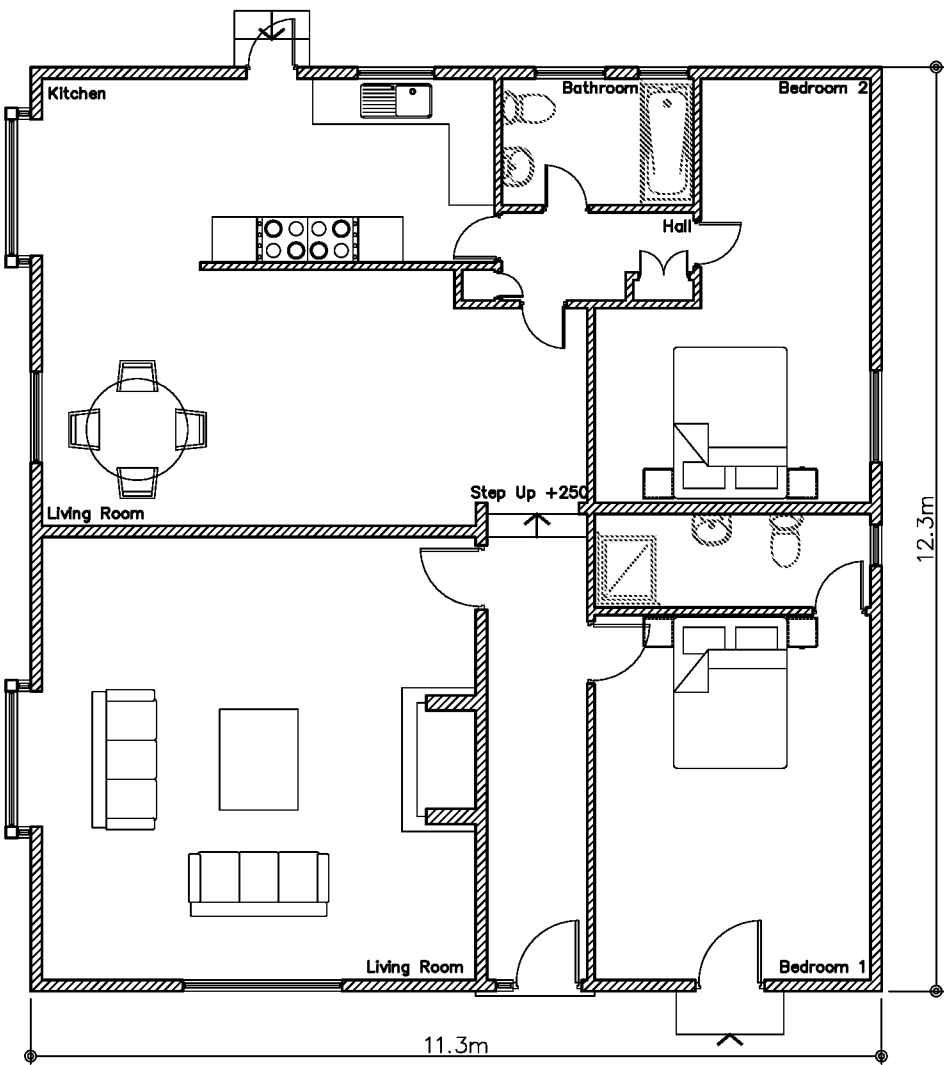


North Elevation @ 1:100

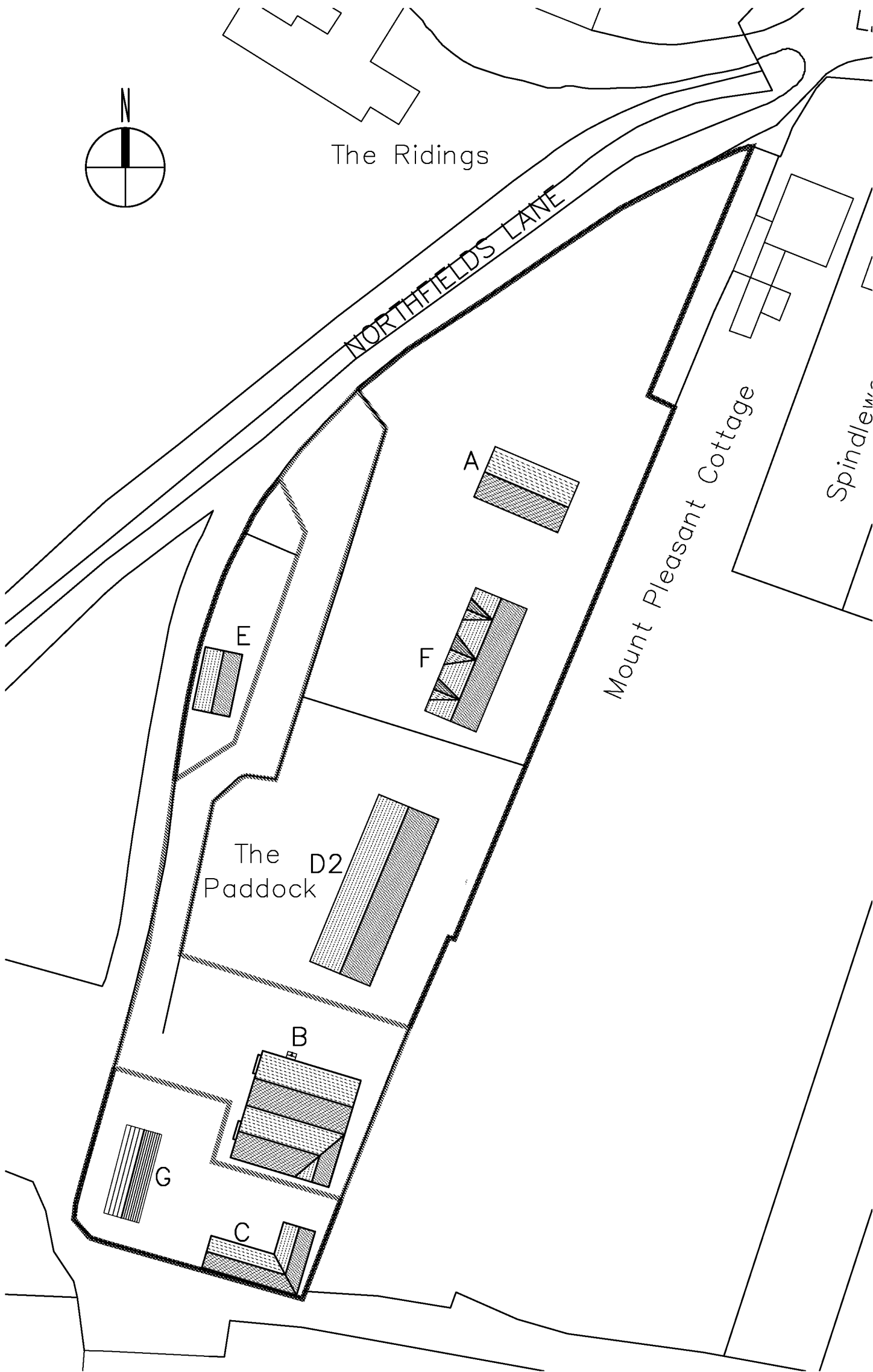
NOTES:
Dimensions to be checked on site before commencing work. Any discrepancies shall be reported to the architect immediately.
Do not scale from these drawings except for planning purposes. Use figured dimensions only.
Where applicable this drawing is to be read in conjunction with other consultants' drawings.
All drawings to be read in conjunction with specification and all other drawings including structural engineer and mechanical and electrical drawings / specification



Roof Plan @ 1:100

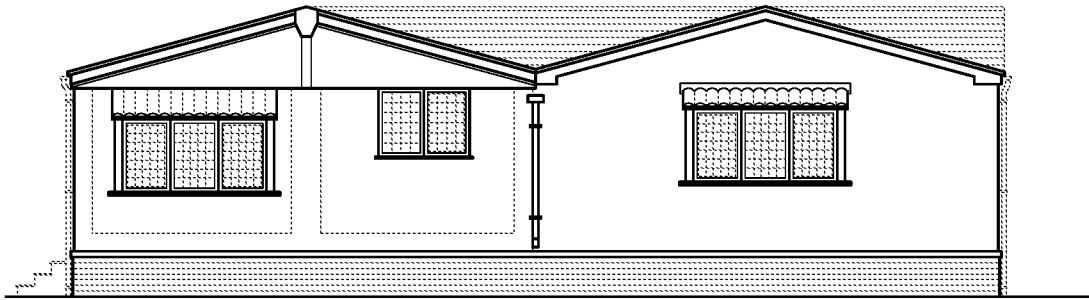


Ground Floor Plan @ 1:50

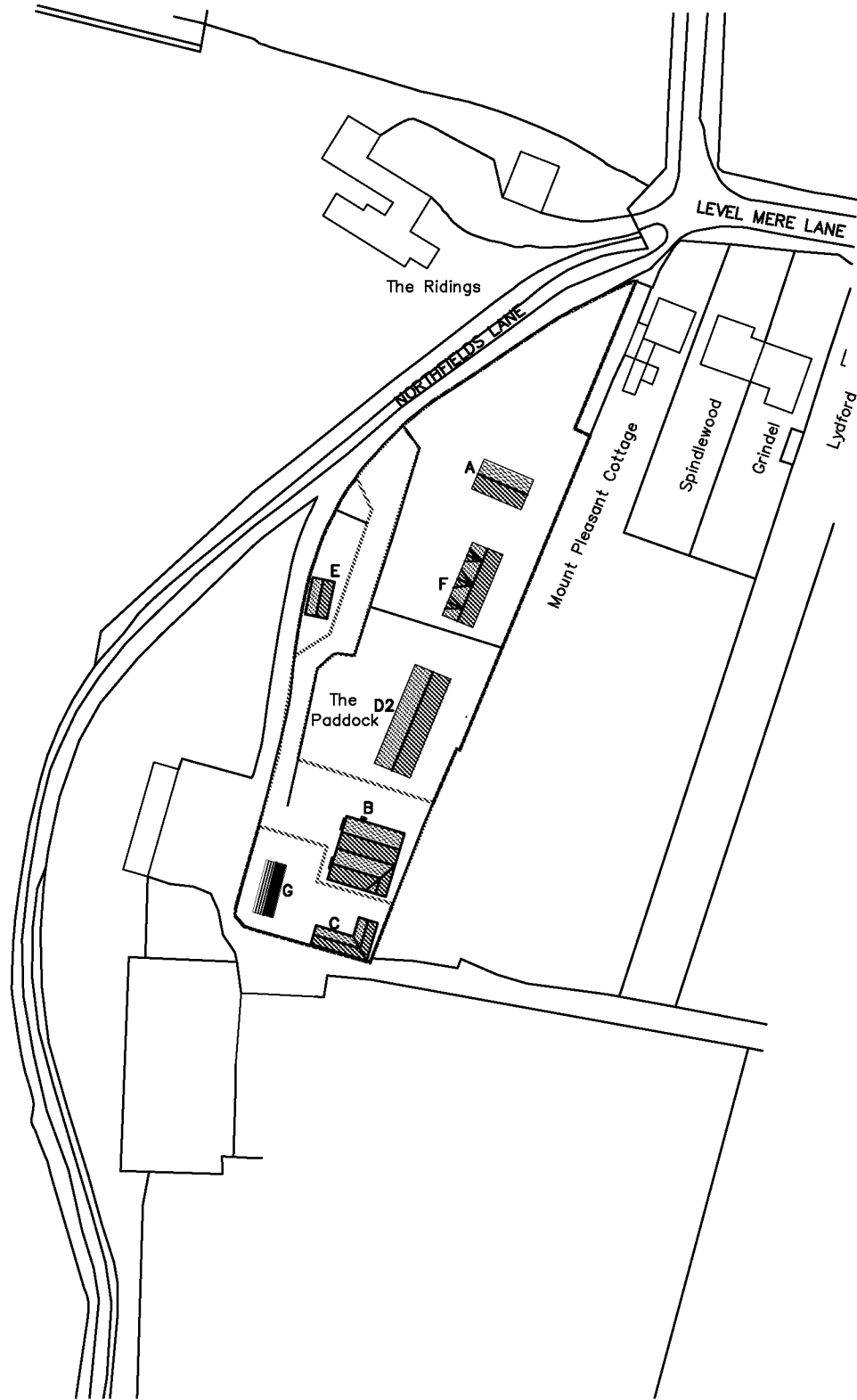


Site Block Plan @ 1:1250

ORDNANCE SURVEY CROWN COPYRIGHT 2016.
ALL RIGHTS RESERVED. LICENCE NUMBER 100020449



West Elevation @ 1:100



Site Location Plan @ 1:1250

REV	DATE	AMENDMENT	DRAWN

helyerdesign
sustainability through design
mail@helyerdesign.co.uk www.helyerdesign.co.uk
1 The Old Flour Mill, Ensworth, PO10 7BT
01243 370 715

CLIENT
Mr Darren Searle

PROJECT
UNITS B
The Paddocks
Northfield Lane
Fontwell

DRAWING
General Arrangement.

SCALE
As Noted

DATE	Jan '10	DRAWN	TD
DRAWING NUMBER	1011/02	REVISION	A

Sandra Edwards

From: Amanda Scholes on behalf of Planning.Responses
Sent: 09 August 2017 08:43
To: Planning Scanning
Subject: FW: Planning Consultation on: AL/79/17/CLE
Attachments: 733af9184c1e43f.pdf; 088dc1e89cb448e.pdf; c657bb17e32b4cb.pdf; 92c6d4304d054db2.pdf; e3039c61463f443.pdf; c22a92fe37e649f.pdf; CLEUD
ADVICE REVISED POST 7 MARCH 2014 NPPG.doc

From: Delwyn Jones
Sent: 08 August 2017 14:23
To: Planning.Responses
Subject: FW: Planning Consultation on: AL/79/17/CLE

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer, Legal Services, [Arun District Council](#) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton
Internal: 37737 | External: +44 (0) 1903 737737 | E-mail: Delwyn.Jones@arun.gov.uk

Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: Delwyn Jones
Sent: 04 August 2017 12:32
To: Delwyn Jones
Subject: FW: Planning Consultation on: AL/79/17/CLE

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer, Legal Services, [Arun District Council](#) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton
Internal: 37737 | External: +44 (0) 1903 737737 | E-mail: Delwyn.Jones@arun.gov.uk

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Save the environment - think before you print.

From: planning.responses@arun.gov.uk [<mailto:planning.responses@arun.gov.uk>]
Sent: 24 July 2017 12:33
To: Delwyn Jones
Subject: Planning Consultation on: AL/79/17/CLE

To: Planning Solicitor- Delwyn Jones

NOTIFICATION FROM ARUN DISTRICT COUNCIL

Town & Country Planning Act 1990 (as amended)
Town & Country Planning (Development Management Procedure) (England) Order 2015:
Article 39
Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

APPLICATION NO: AL/79/17/CLE

Registered: 10th July 2017

Site Address: Unit A The Paddock Northfields Lane Aldingbourne PO20 3UH

Grid Reference: 494005 106397

Description of Works: Application for Certificate of Lawfulness for an Existing Use - Use of building as a dwellinghouse

The Council have received the above application. I shall be pleased to receive any observations you may wish to make.

[Click here to view the application details](#)

Should you have any comments to make, these should be sent by replying to this email by 24-AUG-17.

You can also monitor the progress of this application through the Council web site:
www.arun.gov.uk/planning

Please be aware that any comments you may make will be available on our website so please do not insert personal details or signatures on your reply.

In the absence of a reply within the period stated, I shall assume that you have no observations to make.

The application will be determined having regard to the development plan policies (if any are relevant) and other material considerations. The development plan can be accessed via the website as can the leaflet which deals with material planning considerations.

Should the application go to appeal the Planning Inspectorate will publish any comments made to the Council on their website:

www.planningportal.gov.uk/planning/appeals/ but they will protect personal details.

The officer dealing with this application is Mr S Davis who can be contacted on telephone number 01903 737874.

Regards
Planning Officer

consultee_email

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Tel Ext 737737
Dated Friday 4 August 2017

TO:

Simon Davis Planning Officer

REF: AL/79/17/CLE CONSULTATION

ADDRESS : Unit A The Paddock Northfields Lane Aldingbourne PO20 3UH

NATURE OF USE : OPERATION : Application for Certificate of Lawfulness for an Existing Use - Use of building as a dwellinghouse

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

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

The "4 years rule" applies to establish use as a dwelling

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

3.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 from a building to a dwelling so the time limit is 4 years under the above .

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

The evidence does satisfy this test. See commentary and invoices for builders works

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

Number	Item of Evidence	Comment
1	Application – used began 1 May 2013	This satisfies the 4 year rule for use as a dwelling
2	Receipts 11 Feb 2013 GMS Electrical labour and materials consumer unit installation rewire property extension addressed to 2 The Paddock Mr and Mrs Gibbs -£900	Actual documentary and contemporary evidence of building g work to create a dwelling are contained in all these receipts listed below Highly probative All suggest permanent and not mobile structure
3	G&K Plastering dated 25-3-13 to Gibbs at The paddock Plaster 3 bedrooms Lounge Hallway £1000	Ditto
4	P Fairhead April 2013 £1706 for plumbing and heating work total £2600a addressed to Gibbs at Paddock	
5	Email Dr Murdock to Planning ADC Dated 10 July 2017 Explains 3 applications being sent Doesn’t explain absence of Searle statement Doesn’t explain personal knowledge 2013 building substantially complete as dwelling 3 invoices Refers to previous grant of CLEUD ref AL/123/16/CLE Present dwelling exceeds dimensions for caravan -	Does Angus have personal knowledge of site and its history Shouldn’t he get –at least an affirmation from the applicant ----Mr and Mrs Searle -- of his hearsay statement ? Your site visit will assess these claims
6	2 nd statement by A Murdock This appears to be a duplicate t of the previous statement and appears to present noting new	

7	AL/123/16/CLE – decision to grant CLEUD for dwelling on same plot but different dwelling/different site on same large plot – see plan for AL/123/16/CLE for “plot 1” This is referred to – for consistency of the LPA with its previous advice	The sole significance of this appears to be to refer the LPA to previous legal advice to ensure consistency by reference to extensions meaning the mobile home exceeds the size and siting and mobility requirements to make it stay a mobile home Once these factors are exceeded it isn’t a mobile home anymore
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I seen no evidence of “deceit “ or” fraud “ or covert breach with “blatant misrepresentation “” such as could invoke the late issue of an enforcement notice under the Fidler Principle.

Backed up by the invoices, showing works and a site visit and absence of any contradictory evidence, seen by me, I recommend you can grant this application, judging the evidence on balance of probability

Your site visit will enable you to measure dimensions and “annexation “ of the building to the land. Statements by the Searles might be expected ---but in light of the above –would only be corroborative –of what has been supplied so far and/or can readily assessed by a site visit

I am happy to look and comment on further evidence from the Searles as residents of the building since 2013 ,if obtained/produced to give final confirmation of the claim

4.FURTHER EVIDENCE

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

5.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 and capacity as to number of cars/other vehicles

ref/lgdr/lprec/pl/cleudetcmodeImem

ref