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/98/13/CLE**

LOCATION: 2 Wyndham Acres
Northfields Lane
Aldingbourne

PROPOSAL: Application for a Certificate of Lawfulness 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 conditions imposed by the Inspector in 2003 ceased to become relevant in 2009 because the mobile home became a permanent dwelling and therefore after 4 years, the property has a lawful use as a dwelling.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is flat and comprises an existing former residential mobile home which is part red brick and part render with a pitched roof. The roof is clearly a new feature as it is possible to locate the two original sections of the home from the outside but the two roof pitches are not identical like the two original sections, instead one plane extends at a different angle to cover the side extension on that side. The home has also been extended to the rear and both this and the side extension are apparent from the appearance of the brickwork (no join).

The boundary to Northfields Lane is part close boarded fence and part hedge. There is also a fence along the northern boundary. The boundary on the eastern side is formed by an existing building. The front of the site includes a iron gate with brick piers and a short section of railing topped wall on either side.

The site is accessed off the east side of Northfields Lane, a country track which runs south of its junction with Level Mare Lane. The area is rural in character.

RELEVANT SITE HISTORY

AL/38/99/	Mobile home for staff accommodation for attendance for horses	Refused 19-08-1999
AL/12/02/	Siting of 1 No. residential mobile home (Departure from the Development Plan)	Refused 28-03-2002
AL/40/02/	Siting of 1 no. residential mobile home for settled accommodation	Refused 02-10-2002

AL/142/07/	Siting of mobile home for extended settled gypsy accommadation (Departure from the Development Plan)	ApproveConditionally 04-02-2009
AL/24/09/CLE	Application for certificate of lawfulness for an existing use - conversion of stables to a dwelling	PP Not Required 10-06-2009
AL/100/09/	Retention of replacement stable building	ApproveConditionally 05-11-2009
AL/97/09/	Retention of domestic additions.	Approved Cond + S106 24-09-2010
AL/103/11/	Demolish & rebuild bungalow on same footprint as existing	Refused 24-01-2012

REPRESENTATIONS

Representations received:

Aldingbourne Parish Council - no comments recieved.

Comments on Representations received:

Noted.

CONSULTATIONS

Solicitor - Legal Services
Solicitor - Legal Services

Consultations responses received:

Council's Solicitor:

GENERAL RECOMMENDATION

I recommend you grant for reasons that follow subject to your finding any contradictory evidence. Just to clarify this application is about a mobile home/caravan used as a permanent residence. I rely on you to tell me of any evidence indicating otherwise.

DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

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

The application is for material change of use i.e. caravan used as permanent residence, so the time limit is 10 years under the above.

The time period is i.e. 23/12/2004 - 23/12/2014 so 10 years to date of the application.

The evidence does satisfy this test.

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

(2) Sufficiency of Evidence: para 8.12-8.22

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

Para 8.15 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.

The evidence is sparse, possibly not that clear, on a first reading [Ms Steer's statement does not refer to a caravan], but is sufficient under the above tests and consists of :-

A] agents letter from Mr Cunnane, dated 23 December 2013, which outlines the history -namely that up to 2004 Ms Steer and her partner Mr Smith lived together in a mobile home on the site. In 2004 they separated. From then on till now Mr Smith lived in a barn conversion on the site. This was granted a CLEUD in 2009 ref AL/24/09/CLE. Ms Steer now seeks a CLEUD for her caravan.

B] application form which reconfirms the above

C] statement of one paragraph from K Steer which confirms residence at Wyndham Acres but not residence in a caravan. This information comes from the agent letter. I think a site visit should confirm the age of the caravan, and the period of siting on the land.

D] Officers Report from AL/24/09/CLE which is background, but, in fact, relates to ref AL/24/09/CLE only. It is corroborative of Mr Smith living in the barn conversion.

I suggest these further checks:-

1. electoral roll to check Steer's period of residence in the caravan
2. aerial photos from 2004 - 2014
3. site visit to see condition of the caravan
4. are there any notes on the planning files eg AL/24/09/CLE recording the presence of the caravan?
5. are there any references to the caravan on the eg enforcement or appeal history?

These may produce contradictory evidence , but I have seen none on the file, so suggest a grant on the current evidence seen by me.

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. limit persons in occupation
5. describe any car parks or other curtilage uses/space

Further to the above, additional advice has been received. Firstly (13/03/14):

"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. The relevant time period is therefore 23/12/2009 to 23/12/2013. The Council's solicitor had advised that further information is needed in order to prove when the property ceased to be a mobile home. However, the applicant has stated that sufficient information has already been submitted. Indeed, it is clear from the planning history that the extensions were added prior to the 2009 application and therefore the mobile home ceased to be mobile prior to September 2009.

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 DOE Circular 10/97 Annex 8 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.

The property was originally a mobile home but it is clear that it no longer conforms to the definition of a mobile home as set out in Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the Caravan Sites Act 1968 (as amended) with regard to its size, permanence and physical attachment to the ground. This judgement is made on the basis of the following:

* that the property has been extended twice to the side (an original conservatory being replaced with an integrated side extension) and once to the rear;
* that as a result of the side extension, as approved by the local planning authority, the property no longer conforms to the maximum dimensions for a caravan. These are set out in Section 13(2) of the Caravan Sites Act 1968 (as amended by SI 2006:2374) and allow for a maximum width of 6.7m and a maximum length of 20m. The property now measures 9.5m wide by 16.75m long;
* that the property has had a whole new roof attached and that this includes an integrated support beam;

The property is therefore not considered to be a caravan and the relevant time limit for this material change of use of the land is 4 years (from 23/12/09 to 23/12/13).

ASSESSMENT

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 covering letter from Cunnane Town Planning, dated 18 December 2013, which outlines the history - namely that up to August 2004 Ms Steer and her partner Mr Smith lived together in the mobile home on the site. The mobile home had previously been approved on appeal in January 2003 with a restriction that it should only be occupied by Mr Smith/his wife/dependants for as long as Mr Smith remains a Gypsy. In 2004 Mr Smith and Ms Steer separated. From then on until the present day, Mr Smith lived in a converted barn on the site. This was granted a CLEUD in 2009 ref AL/24/09/CLE. Ms Steer now seeks a CLEUD for her living in the caravan without being married to a Gypsy. The letter concludes that there has been a breach of a planning condition for over 10 years - however, clearly this is not the case as Mr Smith moved out in August 2004 and at the time of writing, it is only April 2014.

(B) The application form which re-confirms the above.

(C) A statutory declaration by Ms Karla Steer which confirms that she has never had Gypsy status and that she has lived at 2 Wyndham Acres with two children since 2004.

(D) An officers report from application AL/24/09/CLE which is background, but is corroborative of Mr Smith living in the barn conversion.

In addition, application AL/97/09 refers to the property. The application approved two extensions

to the property but the report did not refer to the property as a caravan and instead described it simply as being "single storey with flat roof, part brick and part render painted cream". The extensions as approved also effectively added such width to the property so as to take it outside of the definition of a caravan.

Furthermore, aerial photography of the site shows that the home was in place in 2005, 2007 and 2012.

The applicant has recently made further submissions by email to say that:

"Conditions 1, 2 and 3 of the Inspector Decision (ref: APP/C3810/C/02/1093496) restricts the use of the mobile home. As you know, since August 2004, the building/mobile home has been used as a permanent home for Karla Steer who is a non-Gypsy by birth. You will also note that on the Section 106 Agreement (in support of planning application AL/97/09, dated 14th September 2010) signed by Ms Karla Steer instead of Mrs Smith. As you have already noticed during your site visit and confirmed me over the telephone a couple of weeks ago that implementing the planning permission of AL/97/09 the existing building is now not considered as a 'mobile home' under the Caravan Sites and Control of Development Act 1960 (as amended). In summary, the building (which is no longer caravan over 5 years) has been occupied by a non-gypsy person, and it is clearly breach of planning conditions of the Inspector's decision 2003.

I have also reviewed the S106 Agreement prepared in relation to the 2009 planning permission. I have noted that the S106 Agreement refers the retention of domestic additions to a mobile home. As I explained to you over the telephone, CTP had not acted as a planning consultant for 2009 application, but I assume that to describe the extensions the S106 agreement refers as the retention of domestic additions to a mobile home. Since the domestic extensions were built over 5 years ago, the existing building is no longer falls within the 'mobile home' category, and any conditions refer the mobile home is no longer relevant."

And that:

"I am surprised to see your email below. As mentioned in my email earlier, any conditions refer the mobile home in the Inspector's decision is no longer relevant as the existing building is no longer falls within the 'mobile home' category over 5 years. Therefore, request for additional information on dependents is not relevant with the CLE application. Nevertheless, I am writing to give you the dependent's (who live in the property) name and age as requested:" (names & ages omitted from the report for privacy reasons).

It has therefore now become clear that the LDC is sought on the basis that the conditions imposed by the inspector no longer apply although not because Ms Steer is no longer married to a gypsy and her ex-husband no longer lives in the property (as first seemed to be the case) but because the property ceased to be a mobile home in around 2009. A breach of condition had therefore occurred and the relevant period was 4 years on the basis that the property was no longer a mobile home but a dwelling.

It is considered that on a balance of probability the evidence is precise and unambiguous.

CONCLUSIONS

The application has now been clarified in that it is not a question of whether the 2003 conditions are being breached due to the non gypsy status of Ms K Steer but because the conditions refer to a a mobile home which is no longer mobile and has not been since before September 2009. On this basis, the property has been in use as a dwelling for at least 4 years and has a lawful use as a dwelling. This has the result of rendering the conditions attached by the 2003 appeal decision obsolete on the basis that they refer to a mobile home.

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

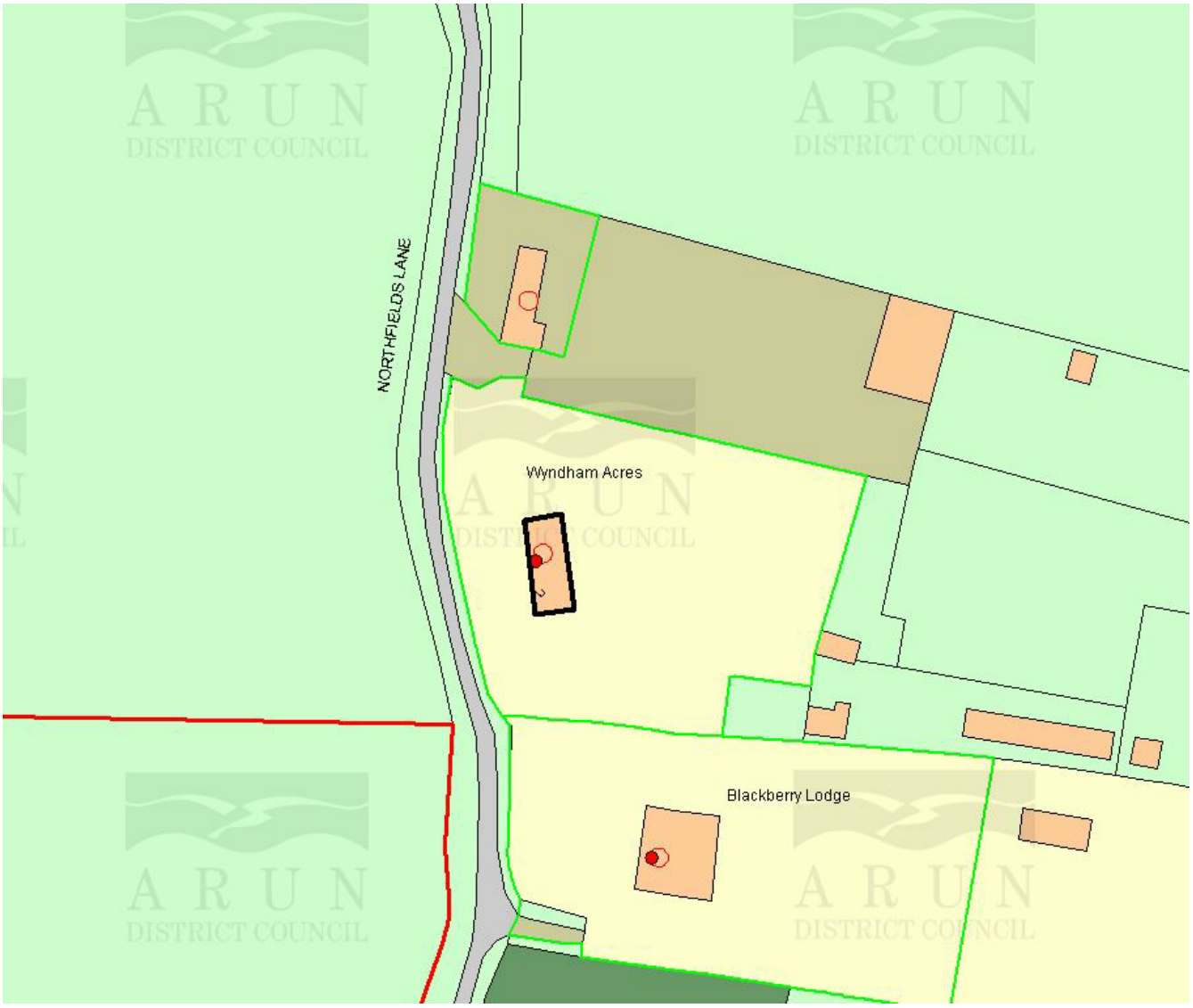
APPROVE

The Arun District Council hereby certify that on 23/12/13 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 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 land as a residential dwelling by Ms K. Steer and her dependants under Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 2013.

SECOND SCHEDULE
The residential property known as 2 Wyndham Acres, Northfields Lane, Aldingbourne, West Sussex, PO20 3UH.

EXTENT OF USE
Use of the property 2 Wyndham Acres which is 9.5m wide by 16.75m long and comprises of a porch, lounge, kitchen & dining room, 1 bathroom, 4 bedrooms (including one with en-suite) all used for residential purposes.



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.

cleoffrep