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P/94/14/CLP

Director of Planning & Economic Regeneration
Arun District Council
The Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

4 September 2014

Dear Sir,

RE: PROPOSED CERTIFICATE OF LAWFUL PROPOSED USE

LAND AT FIELDVIEW, PAGHAM, PO21 1EU

Please find enclosed completed application forms, plan and supporting information in respect of the above matter.

PLANNING STATEMENT

Preliminary Matters

A Certificate of Proposed Lawful Use or Development is being applied for certifying that use of the application site as a caravan site for the stationing of 3 caravans/mobile homes would be lawful.

Planning History

Planning permission was granted on appeal in November 1986, under application No. P/2/86, for the siting of a mobile home. Permission was granted subject to a condition limiting occupation to a particular family.

Planning permission No. P/113/07, for the "siting of [an additional] mobile home for settled gypsy accommodation" was granted subject to 3 conditions: the standard 3 year time limit for implementation; a personal occupancy condition; and a condition requiring the provision and retention of on-site parking space.

Planning application Nos. P/76/10 and P/100/10 sought planning permission for the removal of the personal occupancy conditions attached to planning permissions P/2/86 and P/113/07. Approvals were granted in 2010 subject to replacement conditions limiting occupation of the caravan site to Gypsies and Travellers.

Law and Analysis

There is no separate definition of "mobile home" from that of "caravan" in planning law, and none of the conditions imposed on planning permission Nos. P/2/86 or P/113/07 limit the number of caravans that can be accommodated on the application site. Caravans are not buildings, and their stationing on land for residential purposes, as in this case, is a use of land. Planning permission Nos. P/2/86 and P/113/07 therefore permit use of the application site as a residential caravan site.

I attach an appeal decision at Appendix PBA 1 in which reference is made to the judgement in *I'm Your Man v. Secretary of State for the Environment and North Somerset District Council* [1999] 4 PLR 107 which establishes that the description of development for which permission is granted is not directly enforceable as a "condition or limitation" under section 171(1)(b) of the 1990 Act. In the *Greenacres* appeal the Inspector decided that reference to 6 caravans in the description of development on the planning permission for that site did not restrict the number of caravans that could be stationed on the land. The same must be true in this case: reference to "mobile home" in the description of development does not act as a continuing limitation on the number of caravans that can be stationed on the application site.

Furthermore, the conditions attached to planning permission Nos. P/2/86 and P/113/07 do not specify where, within the site, caravans/mobile homes are to be situated.

In my opinion, not only can the applicant station additional caravans/mobile homes within the application site without requiring planning permission but, the Council has no control over where any additional caravans are to be situated, other than by means of the Caravan Site Licence.

In order to find otherwise, the decision-taker would have to decide that an increase from two mobile homes (which the Council acknowledge to be lawful), to the stationing of three mobile homes constitutes a material change of use of the land requiring planning permission.

It is well recognised law that the issue whether or not there has been a material change of use falls to be considered by reference to the character of the use of land. It is equally well recognised that intensification is capable of being of such a nature and degree as itself to affect the definable character of the land and its use, and thus give rise to a material change of use. However, mere intensification, if it falls short of changing the character of the use, would not constitute a material change of use. Justice Simon Brown J. agreed in ***Lilo Blum v. Secretary of State for the Environment and the London Borough of Richmond upon Thames Council (QBD, June 6, 1986)*** that this would penalise the landowner for making a commercial success of the use of his land and, in any event, would be an undue restriction upon his freedom to use his land as he chose.

In ***Royal Borough of Kensington and Chelsea v. Secretary of State for the Environment and Mia Carla (Divisional Court of Queen's Bench, July 23, 1980)***, Donaldson L.J. pointed out that, whereas the word "intensification" has a perfectly clear meaning in ordinary language, it has a totally different meaning in the mouths of planners. In ordinary language, intensification means more of the same thing or possibly a denser composition of the same thing. In planning language, intensification means a change to something different. He hoped that, where possible, those concerned with planning would get away from the term [intensification] and try to define what was the material change of use by reference to the **terminus a quo** and the **terminus ad quem**. In his opinion, if planners are incapable of formulating what was the use after "intensification" and what was the use before "intensification", then there has been no material change of use.

In the case of *Regina (on the application of John Childs) v. The First Secretary of State and another* (QBD [2005] EWHC 2368 Admin) the Court found that an increase in the number of caravans stationed on a caravan site cannot be said to be incapable of constituting a material change of use. However, in that case, involving an increase from 4 caravans to 8-50 caravans, the Inspector whose decision was being challenged was able to define a difference in the character of the use. The use before intensification had the appearance of a “*minimally used field*”, whereas the use after intensification would have the appearance of “*a field quite clearly used for the siting of residential caravans*”. A copy of the Inspector’s decision is attached at **Appendix PBA 2**.

In the *Childs* case, the 4 existing caravans were sited in one corner of a very large field, screened from public view, whilst the remainder of the field remained undeveloped and in plain view. This can be distinguished from the appeal decision attached at **Appendix PBA 3** in which the Inspector decided that an increase from 1 caravan to 6 caravans would not constitute a material change in the character of the use, because the additional caravans would be accommodated on land that was being used in conjunction with the residential use of the caravan for which planning permission had previously been granted.

In this case, the caravan site is completely hard-surfaced, and is surrounded by domestic walls and fencing. The caravans on the site, and their residential nature and use are the main determinants of the site’s overall character and appearance. As a result, an increase in the number of caravans from 2 to 3 would not change the character of the use of the land. As for the external ramifications of the increase in the number of caravans, there are no nearby residential properties sufficiently close by to be unduly disturbed by any additional residential activity on the appeal site, and the extra traffic generated by one extra household is hardly likely to result in a material change to the character of Pagham Road.

In my opinion, an increase from 2 to 3 caravans would not constitute a material change in the use of the application site and a Certificate of Lawful Proposed Use or Development should be granted as applied for.

Yours faithfully,

PHILIP BROWN BA (HONS) MRTPI