

TOWN AND COUNTRY PLANNING ACT 1990



DECISION NOTICE

Application Ref: P/113/07/

1 To Addressee

Mr A Greenwood
94 The Street
Rustington
West Sussex
BN16 3NJ

2 Site Address

Merrymead
Pagham Road
Pagham

3 Description of Development

Siting of mobile home for settled gypsy accommodation

4

In pursuance of their powers under this Act and related Orders and Regulations the Council PERMIT this development to be carried out in accordance with the application and plan and subject to compliance with the conditions specified.

CONDITION 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

CONDITION 2 The residential mobile home hereby permitted to be stationed on the site shall not be occupied otherwise than as by Mr and Mrs William Gaskin as one single unit of accommodation.

Reason: The site lies in an area where in accordance with the policy LOC2 of the West Sussex Structure Plan permission for development unrelated to the essential needs of agriculture and/or forestry would not normally be granted in accordance with GEN2, GEN3, GEN7 of the Arun District Local Plan.

CONDITION 3 The mobile home hereby permitted shall not be occupied until space has been laid out within the site in accordance with details submitted to and approved by the Local Planning Authority for the parking and turning of vehicles clear of the public highway and such space shall not thereafter be used other than as a parking and turning area.

Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

INFORMATIVE:

Summary of Reasons for Grant Article 22(1) General Development Procedure Order 1995

SUMMARY

This planning permission was granted because, although the proposed development does not comply with the policies in the Development Plan Listed below in that the proposal is for a new mobile home in the countryside, there are material considerations which indicate that it can be granted. These material considerations are that the site is for an additional unit on an existing gypsy site the son of the existing site owner

RELEVANT POLICIES

STRUCTURE PLAN: LOC2

LOCAL PLAN: GEN7

NATIONAL POLICIES: PPS1, PPS7, CIRCULAR 1/2006

This paragraph is to comply with Article 22 General Development Procedure Order 1995

INFORMATIVE:

The District Council's Environmental Health Officer advises that the site licence will need to be amended to accommodate the new unit.

Head of Planning Services
Arun District Council
The Arun Civic Centre
Maltrovers Road
Littlehampton
West Sussex BN17 5LF

Case Officer: Mrs S Leeson

Date of Decision: 28th November 2007

Date Decision Issued: 29th November 2007

Howard Cheadle
Head of Planning & Housing Strategy

IT IS IMPORTANT THAT YOU READ THE NOTES ATTACHED TO THIS DOCUMENT



Appeal Decision

Hearing held on 29 August 2007
Site visit made on 29 August 2007

by **Neil Roberts** BA DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Temple Quay House
2 The Square
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Decision date: 4
September 2007

Appeal Ref: APP/W3520/X/07/2039698

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr M Jay against the decision of Mid-Suffolk District Council.
- The application Ref 1869/06/LDCP, dated 7 August 2006, was refused by notice dated 8 December 2006.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is increase in the number of caravans on a lawful caravan site from 6 to 12.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. In this case the burden of proof rests with the appellant to demonstrate that, as a matter of fact and degree, an increase in the number of caravans on the site from 6 to 12 would not constitute a material change of use, and would thus be lawful.

Reasons

2. The judgement in *I'm Your Man Ltd v Secretary of State for the Environment and N Somerset DC* [September 1998, CO/728/98, R Purchas, Deputy Judge] is directly relevant to this appeal. That judgement is concerned with whether the description of development in an appeal decision as being for a temporary period of 7 years itself acted as a limitation on the scope of the permission granted. It was held that, in the absence of a condition on the planning permission requiring cessation of the use after 7 years, the permission granted was a permanent one. In my view the judgement in *I'm Your Man* has general application against reliance on the description of development on a planning permission as some form of limitation of the development permitted. In the case before me the development permitted by planning application 559/84 is thus not restricted to the siting of 6 caravans, the permission containing no condition restricting the number of caravans.
3. The judgement in *Childs v First Secretary of State and Test Valley BC* [Q.B.D., 18 October 2005, J Goudie, Deputy Judge] establishes the principle that an increase in the number of caravans on a site cannot be said to be incapable of

constituting a change of use. By reference back to the judgement in *Brooks and Burton Ltd v Secretary of State for the Environment and Dorset CC*, it was held that in assessing whether there has been a material change of use account has to be taken of the character of the use of the land, including factors such as the planning consequences and environmental impact of any particular use. Whether such a change is a material change of use is then a matter of fact and degree to be determined in each case.

4. In this case it was agreed at the Hearing that the site is well screened at all times of the year by a dense high hedge. Any increase in the number of caravans would not be apparent from outside the site. There would thus be no visual impact on the character and appearance of the area. The caravans would be occupied for residential purposes in a manner similar to occupation of the existing caravans. In that sense there would be no change in the nature and character of the use. If occupants of the additional caravans pursued ancillary business activities on the site, that too would mirror what already takes place, which is typical of a gypsy site. I would add that the physical limitations of the site, particularly after 6 extra caravans were introduced, would constrain the extent to which there could be an intensification in business activities. I doubt if a change in the character of the overall use of the site would arise.
5. It may be that there would be some increase in vehicular movements, though that is not certain as families already on the site could, for example, introduce a touring caravan which would simply provide additional living space for the family when it was not used for touring. In any event the local road network, though including relatively narrow lanes, serves the population and businesses, including many farms, of a relatively wide area. From my observations the network is far from bereft of traffic. In that situation, even taking the worst case of 6 additional families living on the site, I feel any extra vehicular movements generated would be barely perceptible and would not constitute a change in the character of the use.
6. In my judgement the planning consequences and environmental impact of an increase from 6 to 12 caravans on this lawful residential caravan site would not be such as to change the character of the use of the land. On that basis I consider that such an increase in the number of caravans would not, as a matter of fact and degree, amount to a material change of use.
7. I have considered other appeal decisions drawn to my attention. However, I have determined the appeal on its own merits on a fact and degree basis.
8. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an increase in the number of caravans on the lawful caravan site from 6 to 12 was not well-founded, and that the appeal should succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA MRTPI

Principal, Philip Brown Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Matthews MA

Planning Officer

Mr R Vincent DipTP MRTPI

Planning Officer

DOCUMENTS

- 1 List of persons present at the hearing



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

The Planning Inspectorate
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IT IS HEREBY CERTIFIED that on 7 August 2006 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The increase in the number of caravans from 6 to 12 on the lawful caravan site would not, as a matter of fact and degree, constitute a material change of use of the land.

Signed

Neil Roberts

Inspector

Date 4th September, 2007.

Reference: APP/W3520/X/07/2039698

First Schedule

Increase in the number of caravans on a lawful caravan site from 6 to 12.

Second Schedule

Land at Greenacres, Mill Road, Wetheringsett-cum-Brockford, Suffolk.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.





Appeal Decision

Site visit made on 7 December 2004

by D E Morden MRTPI

an Inspector appointed by the First Secretary of State

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Date

24 MAR 2005

Appeals A, B, C, D: APP/C1760/X/04/1152169, 1152170, 1152171 and 1152172

Land adjoining Leckford Hutt PH, London Road, Chilbolton, Stockbridge, Hampshire,

- The appeals are made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeals are made by Messrs R C & A Childs against the decisions of Test Valley Borough Council.
- The applications Refs: TVN.CLP.00006/1; 00006/3; 00006/2 and 00006/4, all dated 24/11/2003, were refused by notices dated 5/3/2004 in respect of Appeal A and 19/1/2004 in respect of the other three appeals.
- The applications were made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use is sought is, respectively, for the use of the land as a residential caravan site for 8, 15, 30 and 50 caravans.

Summary of Decisions: The appeals are dismissed as set out in the Formal Decisions at paragraph 22 below.

Procedural Matters

1. In determining these appeals I note that an appeal decision on 24 April 2003 (Ref APP/C1760/X/01/1071758) allowed the appeal and granted a Certificate of Lawfulness (LDC) for four residential caravans on the site (as at 10 May 2001). The Council have since then also issued a Certificate of Lawfulness (September 2003) for five residential caravans on the basis that it would not involve a material change in the use of the land if the number increased from four to five.

Main Issue

2. The only issue between the parties in each appeal is whether a material change of use would be involved in increasing the number of residential caravans on the site from four to some higher number (8, 15, 30 and 50 respectively). Each case has to be looked at against the lawful use of the land for the siting of four residential caravans.

Reasons – Appeal A

3. The appellant's argument is based on a very simple premise, namely that the use of the whole 2.5 hectare field has a lawful use for the siting of four residential caravans; although the numbers in the applications are higher and would clearly be an intensification of the use, it would simply be an intensification, it would not alter the fundamental nature of the use. In that case there is no material change of use involved and no 'development' as defined in the Act would take place. The same principle is put forward in support of all the appeals (4 to 8; 4 to 15; 4 to 30 and 4 to 50 caravans).

4. The Council argued that there would be a change in the fundamental nature of the use if the number increased to eight from four and consequently there would also be a change if it increased to some higher number than that.
5. As the appellant argues, mere intensification of use does not in itself constitute a material change of use and the courts have decided this on a number of occasions as set out in the notes in the Encyclopedia (of Planning Law) at volume 2 P55.53 and in the appellant's representations. Any change, in order to constitute a material change of use by intensification, must be to a degree that amounts to a change in the character of a use. In looking at the character of this use, however, it is legitimate to take into account the impact, in planning consequences, of the change on the immediate surroundings outside the planning unit. I consider that that would include examining such matters as the appearance of the site in the landscape and its impact on the visual amenity of the area; the activity taking place on the land; the traffic generated by the use both in terms of numbers of vehicles and patterns of movement and also the effect on the immediately surrounding roads.
6. I do not agree with the appellant that a material change in the appearance of the land is irrelevant to deciding if there has been a change in the character of the use. That is to take too narrow a view and it must be relevant to take that into account as the change in character needs to be looked at in planning terms at its widest; in doing that the appearance is one element of the character of the use in land use terms.
7. Having travelled along the old A30, London Road, both to the south west and north east of the site (it fronts that road on the north side) and also in a north west and south east direction along the two smaller roads that form the crossroads where Leckford Hutt (a currently empty public house/restaurant) stands, the site is basically an open field in an undulating landscape characterised by open agricultural land. There are hedges to most of the field boundaries and not many trees in a landscape that apart from Leckford Hutt appears virtually devoid of any built form.
8. In the south west corner of the field to the north of Leckford Hutt there is a small area of trees screening the building its car park and other small outbuildings from the appeal site. The site is generally flat although it does rise a little to the north west and the land continues to rise more steeply moving away from the site. The land to the south west of the appeal site rises more steeply and approaching from the south west there are clear views into the appeal site when travelling along London Road. It is in this context that the difference between four caravans on this site and any higher number has to be considered.
9. The view at the time of my visit was basically an open grassed field and the two small semi-detached caravans that were there were basically unseen in the south west corner close to the trees. I acknowledge that four caravans can be sited anywhere on the field but looking from the London Road I consider that the view would still basically be of a generally little used open field. They would not necessarily be situated such that they would be hidden from view but that is possible with just four caravans. The impact on the landscape is minimal and similarly the amount of activity and traffic that would normally be associated with four residential units would, in my opinion, also be minimal.
10. In simple terms it is clear that with eight residential caravans there would be twice as much to see on the site and its impact on the landscape visually would, in my opinion, be

significantly greater than the impact from the lawful use. With only four caravans I consider it would be possible to walk or drive past the site and not really be aware that there were caravans in the field; their impact would be insignificant as would any residential activity associated with them. In some locations they would be completely screened from outside views and only noticeable from within the field.

11. With eight caravans there would, in my opinion, always be views of them when approaching from either direction along London Road particularly from the south west as one travels down towards the site from higher land. I acknowledge that the appellant has stated that they could be sited anywhere on the site but even if they were all sited on the frontage and clearly visible that would in my opinion, only seek to emphasise how much more intrusive eight caravans would appear compared to four. I saw at my visit that there were about six places close to the trees and the western boundary where there were power and water connections and I consider it reasonable to expect that the four caravans lawfully allowed to be there would be close to these connections.
12. In looking at what would be seen on the land and assessing its visual impact it is not just the caravans that need to be taken into account but also the fact that there would be residential paraphernalia outside of the caravans (washing lines, tables, chairs, barbecues, children's play equipment and the like and in all likelihood at least one vehicle. The site is a long way from any settlement and there was no indication I could see at the site that it was served by public transport. The nearest settlements are too far away to walk to and in any event there are no footways on any of what I saw were busy roads which carry fast moving traffic.
13. Visually I consider that four caravans and their other incidental paraphernalia and vehicles would appear discreet in the landscape but I do not consider as a matter of fact that that would be the case with eight. Viewed in the landscape the land would, in my opinion, take on a materially different character; it would clearly appear as a developed site which I do not consider would be the case if there were only four caravans.
14. In addition to how the site would appear in the landscape, I consider that there would be a significant change in the activity on site. A caravan by definition includes one large enough to accommodate a family and in those circumstances there could be a considerable increase in the level of activity associated with an increase in the number of caravans due to significant numbers of people being permanently at the site. There would also be a significant change in the level of vehicles going to and from the site, not just those who lived there but also their necessary service and delivery vehicles and friends and family who would come to visit them at their homes.
15. I am of the opinion that, as a matter of fact and degree, there would be a material change in the character of what was happening on the site if the number of caravans stationed there and occupied residentially increased from four to eight. In my view it is not just a case in general terms of double the numbers and double all the consequences. That doubling of consequences results in the site being perceived in a materially different way and all that takes place on it and immediately around it being materially different in its character.
16. I acknowledge that it is difficult to define exactly how it is different and at what number of caravans the change becomes material but I take the view that the lawful use for four caravans is such a low level of use in an area virtually devoid of any development at all (at least when looking in all directions from the appeal site itself), that any increase appears

significant. To double the number of caravans and thereby, in all probability, the activity on the site itself and vehicular movements to and from the site, in my opinion would change the site from what appears generally as an open minimally used field into a field quite clearly used for the siting of residential caravans.

17. Further, whilst I agree that it is not open for me to speculate, my experience of many other caravan sites tells me that there would inevitably be other things that would change and the character of what is on the land would be materially different both visually and in its effect on the immediate surroundings. There was no indication when I was there that vehicles had regularly driven on to the site to gain access to any caravans parked there in the past; indeed there was pedestrian access from the land into the fairly small parking area at the side and rear of the Leckford Hutt building. It is likely that when those who lived there were staff that they parked their vehicles in the car park.
18. Whilst a small number of vehicles, even in the winter, might be able to drive on and off the site regularly the increase to eight would almost certainly result in a proper surfaced 'road' of some description being required in order that people could actually drive on and off the land without it becoming rutted and impassable. Similarly, whilst there were no concrete bases for caravans to stand on and no fences to demarcate plots had ever been erected, I consider that this would likely if the number of caravans stationed on the site increased to eight. These would be more factors that I consider, as a matter of fact and degree, would result in a fundamentally different character of use that one would see when looking at the site.

Conclusions- Appeals A, B, C and D

19. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the siting of eight residential caravans was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.
20. The reasoning and conclusion set out above relates to Appeal A which was for the use of the site for the stationing of eight caravans. Having reached this conclusion on that appeal I consider that the change in the character of the use if the numbers increased from four to 16, 30 or 50 caravans would clearly, in my opinion, be even more dramatic. I conclude, in these circumstances, that there would be a material change in the use of the land in each of the three cases. In particular the formation of roads and parking areas on the land, fences separating plots, other small buildings that might house equipment for the upkeep of the site, refuse collection compounds and other ancillary areas and buildings would all be likely on sites of 30 and 50 caravans and even on a site of 15 some of those features would be likely to be found.
21. In addition to how the site would appear different there would be a completely different level of activity and traffic generation with ever higher numbers of caravans leading to materially different levels of activity. I conclude that taking these matters into consideration there would clearly be a material change in the nature of the use taking place on the site, it would not just be a matter of higher levels of the same use. I shall also, therefore, dismiss the three appeals for 15, 30 and 50 caravans on the basis that the Council's decisions on them were also well founded.

Formal Decisions – Appeals A, B, C and D

22. I dismiss these appeals.



INSPECTOR



Appeal Decision

Inquiry held on 25 November 2009

Site visit held on 26 November 2009

by **Derek Thew DipGS MRICS**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
4th January 2010.

Appeal Ref: APP/J3205/X/09/2099134

The Smithy, Hampton Loade, Bridgnorth, WV15 6HD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nino Lee against the decision of Bridgnorth District Council (now Shropshire Council).
- The application ref. 08/0627, dated 28 August 2008, was refused by notice dated 9 January 2009.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use as a residential caravan site accommodating 6 caravans.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

Reasons

Planning & Licensing Background

2. The application relates to land, with an area of about 0.6ha, situated on the eastern bank of the River Severn and in the hamlet of Hampton Loade. The land currently accommodates a twin-unit residential mobile home which conforms with the statutory definition of a 'caravan' as set out in s.29(1) of the Caravan Sites & Control of Development Act 1960, and section 13(1) and (2) of the 1968 Caravan Sites Act.
3. The siting on land of a caravan used for residential purposes is subject to the provisions of both the 1960 Act and the Town & Country Planning Act 1990. For the purposes of both Acts the expression 'caravan site' means "*land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*" (section 1(4) of the 1960 Act). This definition is applicable to land at 'The Smithy', and so all or part of that land amounts to a caravan site for the purposes of both Acts.
4. Land shall not be used as a caravan site unless the occupier holds a site license issued under Part 1 of the 1960 Act. Furthermore such a license may only be issued by a local authority if a planning permission has previously been granted, under the 1990 Act, for that use of the land. Consequently in detailing the current lawful use of land at 'The Smithy' it is appropriate to have regard to the provisions of both Acts.

5. In relation to the 1990 Act, on 4 June 1957 planning permission (no.13530) was granted for the "use of land for the stationing of a caravan" at 'Riverside', Hampton Loade. The plan of the locality submitted with the application does not delineate an application site. Rather that drawing shows, marked freehand, a circle with an 'X' inside and describes this as "present site of caravan...". The location of that symbol broadly approximates to the position of the mobile home currently on the land. As such 'Riverside' can be taken to be the name by which 'The Smithy' was formerly known.

6. The 1957 scheme was described in the application form as follows:

" No actual development is to take place beyond the placing of one 4-berth caravan on a portion of the land mentioned, to be used:

(a) by applicant and his family & (PH Act 1936)

(b) seasonally by others at holiday times by license of applicant."

On the basis of this wording I am satisfied the intention was for the caravan to be used for residential purposes, and I understand that to be the use to which any caravan thereafter sited upon the land has been put.

7. With regard to the 1960 Act, between 1957 and 2007 a total of 14 site licenses were issued by the local authority in respect of land at what is now 'The Smithy'. Thirteen of the licenses have no plan attached to them and identify the land to which they relate only as 'OOS Salop LXV 11.9 Field no.199'. There is no evidence before me to identify the extent of that parcel of land. The fourteenth site license is dated 10 August 2007 and was issued to Mr & Mrs A J Crupton at 'The Smithy', Hampton Loade. Schedule 1 of the license states that "only 1 fully serviced park home shall be stationed on the site for residential purposes as permitted in planning permission 13530". The area of land to which that license relates is defined on a plan. That area includes the site access and the central portion of the current application site. It excludes the walled remains of the former Hampton Loade Ironworks on the southern portion of the application site and the previously overgrown area on the northern portion of the application site.

8. In summary, therefore, 'The Smithy' is a lawful caravan site with planning permission for the siting there of one residential caravan. As to the physical extent of the lawful planning unit to which that use is attached, it was agreed at the inquiry that it should be taken as the land defined on the plan attached to the 2007 site license. On that basis, it is the reduced area of land described in the preceding paragraph, rather than the whole application site, to which I have had regard in determining this appeal. A corrected site plan is accordingly appended to this decision.

Consideration of the Appeal Proposal

9. Section 191(2) of the 1990 Act provides that:

For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice.

Lawfulness is, therefore, determined under the Act on the basis of whether enforcement action may or has been taken in respect of the use or operation in question. Such action can only be taken pursuant to a breach of planning control. Consequently, in order to determine whether increasing the number of caravans at 'The Smithy' from 1 to 6 would be lawful, it is necessary to determine whether enforcement action could be taken if such an increase were to occur, and this requires an assessment of what constitutes a breach of planning control for the purposes of the 1990 Act.

10. Section 171A(1) of the 1990 Act describes a breach of planning control as amounting to either:

(a) carrying out development without the required planning permission: or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted."

11. With regard to sub-section (b), no conditions were attached to the 1957 planning permission. As such, any increase in the number of caravans on the land would not amount to a failure to comply with any condition.

Furthermore, in the context of this sub-section, the word 'limitation' refers only to a time limitation imposed by a development order; and that is not applicable in this case. Consequently, any increase in the number of caravans on the land would not contravene the provisions of section 171A(1)(b) of the 1990 Act.

12. In the light of the above finding, any increase in the number of caravans on the land would only be in breach of planning control if I were to conclude that it amounted to the "carrying out development without the required planning permission" (section 171A(1)(a)). For the purposes of the 1990 Act the word "development" means either the carrying out of operational works or the making of any material change in the use of land or buildings. In the context of the current appeal I need to consider whether the proposed increase in the number of caravans from 1 to 6 would amount to a material change in the use of the land.

13. I am mindful that the 1957 planning permission was for the use of the land for the stationing of one caravan. That was what the applicant in 1957 wanted and that is what was granted. But it would be wrong to conclude that the proposed increase in numbers would amount to a material change of use of the land just because it differed from what was permitted in 1957. Rather it is necessary to look beyond the wording used in 1957 and to consider what constitutes the making of a material change of use. I draw support for this approach from the judgement in I'm Your Man Ltd-v-Secretary of State for the Environment [1998] 4PLR107.

14. If the number of caravans on the land were to be increased from 1 to 6 then there would be an intensification in the scale at which the use operates. Whether or not intensification can amount to a material change of use was considered by Justice Simon Brown in Lilo Blum-v-Secretary of State for the Environment & the London Borough of Richmond upon Thames Council [1986] JPL 278, as follows:

"It is well recognised law that the issue of whether or not there has been a material change of use falls to be considered by reference to the character of the use of the land. It is equally well recognised that intensification is capable of being of such a nature and degree as of itself to affect the definable character of the land and its use and thus give rise to a material change of use. Mere intensification, if it falls short of changing the character of the use, would not constitute a material change of use."

These words summarise what I regard as the correct approach to intensification. A proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use.

15. The existing mobile home is located fairly centrally within the corrected appeal site and the remainder of the site is laid-out predominantly as a landscaped garden for occupants of the unit. The mobile home is visually prominent, and its residential nature and use are major determinants of the site's overall character and appearance. When planning permission was granted in 1957 it was probably envisaged there would be just one modest caravan on a large open site rather than something markedly more intensive. But what was permitted accords with the legal definition of a caravan site, and what currently exists is a low-key caravan site.
16. If the number of mobile homes or caravans on the land were to be increased from 1 to 6 then I accept the appearance of the site would change. There would be more structures on the land, more hard surfacing, more activity, more traffic and more general paraphernalia of day-to-day living. But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site and, in my view, that is the character it would have with the additional caravans there. The proposed increase would not result in a material change in the nature of the use that is made of the land. It would simply be more of the same use. As a result, I consider the siting of 6 residential caravans on the land would not amount to a material change of use from what was permitted in 1957. I draw support for this view from the comments on the subject of intensification made by Lord Justice Donaldson in Royal Borough of Kensington and Chelsea-v-Mia Carla Ltd [1981] JPL 50.
17. In summary, therefore, I am satisfied that an increase in the number of caravans on the land from 1 to 6 would not contravene any of the provisions of section 171A(1) of the 1990 Act and, as such, would not be in breach of planning control. As set out in paragraph 9 above, a use of land which is not

APPEARANCES

FOR THE APPELLANT:

M Willers

He called

P Brown

Counsel, instructed by Philip Brown Associates

Philip Brown Associates, Rugby, CV21 2QX

FOR THE LOCAL PLANNING AUTHORITY:

N Blackie

He called

J Hayes

R Brown

R Ibberson

Mrs S Jones

FBC Mamby Bowdler LLP

Local resident

Local resident

Local resident

Planning Officer, Shropshire Council

INTERESTED PERSONS:

D Goulding

R Whittle

Resident of Sutton Coldfield

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Letter of notification and list of persons notified
- 2 Acreage of application site
- 3 Amended application site
- 4 Bundle of case law from appellant
- 5 Glamorgan CC -v- Cater [1962] 3 All ER 866
- 6 Note re case law handed in by Council at site visit



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Tel: 0117 372 6372
email: enquiries@pins.gov.uk

IT IS HEREBY CERTIFIED that on 28 August 2008 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On 4 June 1957 planning permission no.13530 was granted for the use of the land for the stationing of a caravan. The use of the land as a residential caravan site accommodating 6 caravans would not amount to a material change from that permitted use.

Derek Thew
Inspector

Date 4th January, 2010.

Reference: APP/J3205/X/09/2099134

First Schedule

Residential caravan site accommodating 6 caravans

Second Schedule

Land at The Smithy, Hampton Load, Bridgnorth, WV15 6HD

IMPORTANT NOTES - SEE OVER

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use is only conclusively presumed where there has been no material change before the use is instituted in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 04/01/2010.

by Derek Thew DipGS MRICS

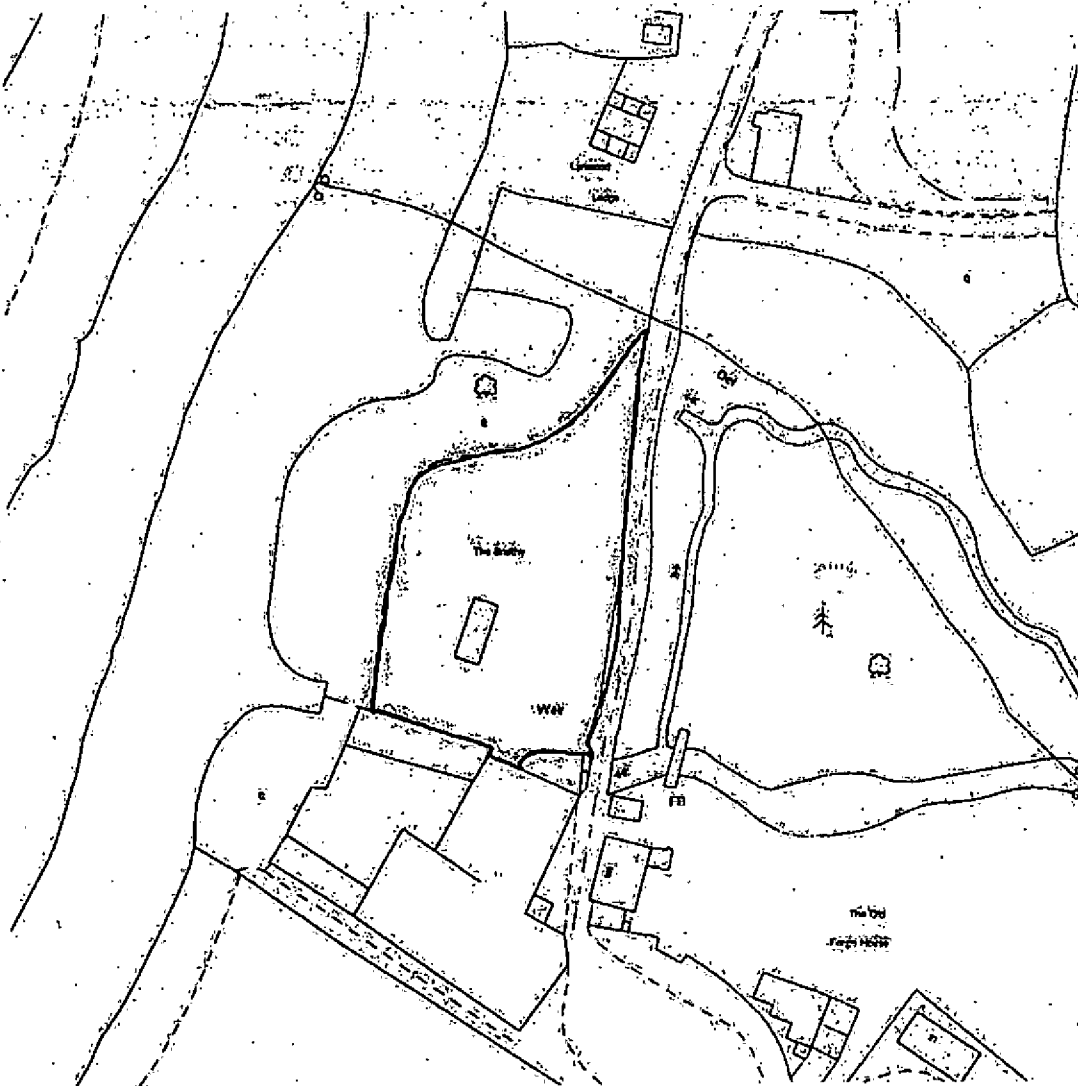
Land at The Smithy, Hampton
Loade, Bridgnorth, WV15 6HD

Reference: APP/J3205/X/09/
2099134

The Planning Inspectorate
4/19 Eagle Wing
Temple Quay House
2, The Square
Temple Quay
Bristol BS1 6PN

0117 372 6372
email: enquiries@plins.gsi.gov.uk

Scale



60X/JF/P



Department of the Environment and Department of Transport

Common Services

Room 1417 Tollgate House Houlton Street Bristol BS2 9DJ

Tel: 448321

Direct line 0272-218 927

Switchboard 0272-218811

GTN 2074

C A Beresford-Webb and Co
Town Planning Consultants
Wrentham House
23 Queens Road
COVENTRY
CV1 1NG

01 DEC 1986
CENTRAL SERVICES

Your reference:
CAWM/SONN

Our reference:
T/APP/C1810/A/86/007208/P2

Date

27 NOV 86

APPEAL	
FILED	✓
RECEIVED	✓
RECEIVED	✓
RECEIVED	✓
RECEIVED	✓
RECEIVED	✓
RECEIVED	✓
RECEIVED	✓

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY MRS LINDA S GARTIN
APPLICATION NO: P/2/86

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal. This appeal is against the decision of Arun District Council to refuse to grant planning permission for the siting of a residential mobile home on land at the junction of Commonmead Lane/Pagham Road, Pagham, Bognor Regis, West Sussex. I held a local inquiry into the appeal on Thursday, 23 October 1986.

2. The application is made in the terms stated above but as made clear at the inquiry, the council's decision took into account that it was for a caravan for a gypsy family. With the agreement of both parties I shall also consider the application in this light.

3. From my inspection of the appeal site and of the surrounding area and from my consideration of the representations made at the inquiry and in the letters received, I have come to the conclusion that the main issues in this appeal are whether or not in the light of the special consideration accorded gypsies in Circulars 28/77 and 57/78, development as proposed would adversely affect firstly, the character and appearance of the area bearing in mind the policies in operation and secondly, the safety of all forms of traffic on the highway.

4. Your client has lived in this part of the county for a long time and purchased the appeal site and made the appeal proposal so that she may live thereon with access from Pagham Road, because social pressures on her and her husband have obliged her to move from the authorised gypsy site at Middleton, where she has lived for a number of years.

5. The appeal site stands on the north corner of the junction of Commonmead Lane with the side of Pagham Road, a C classified highway, about 200 m north of the edge of the village of Mytcham. The site is a hard core covered, rectangular parcel of former garden land with frontages to both highways and vehicular access from Commonmead Lane. The north and eastern boundaries are formed by 1800 mm or so high timber panel fences and the west and southern boundaries by 900 mm or so high timber fences of similar construction.

6. To the north the site is adjoined by the curtilage of a 2 storey house fronting Pagham Road and to the west by a 2 m or so deep drainage ditch with an orchard, adjoining the extensive buildings of the farmstead of Rockery Farm, beyond. To the south and east beyond the highways is extensive open countryside.

7. Turning to the first issue. The site has a planning history that includes 2 refusals on appeal for a dwelling and a caravan and there is an enforcement in being preventing the use of the site to accommodate a caravan. Although the site adjoins a dwelling and appears to be part of the Rookery Farm complex I find no reason to disagree with my colleagues assessment of the site as being within open, rural countryside which the policies, quite properly, are designed to protect. It follows that your client's proposal is a form of development not permitted by the provisions of the Structure Plan or the Informal Local Plan. However the Circulars enjoin me and the local planning authority when deciding an application to have a flexible approach where gypsies acquire land themselves on which to settle.

8. The appeal site is of limited extent with well-defined boundaries, is within a reasonable distance of shops and other services, is not to be used as a work area and is quite capable of being effectively landscaped into its surroundings. In these circumstances I am satisfied that use as proposed would have very little adverse effect on the surroundings and that an exception to the general objections there are to residential development unconnected with the needs of the countryside, is justified.

9. In respect of the highway objection I accept that the access proposals are sub-standard. Pagham Road is a reasonably well used highway, is subject only to the general speed restriction on single carriageways and is devoid of footpaths. However, the site is not isolated but is part of a frontage of development close to and clearly visible from long stretches of Pagham Road to both north and south and is on the outskirts of the town where vehicles joining or leaving the highway are not unexpected. While visibility falls below the recommended standards my opinion is that in the specific circumstances applying here, it is not so serious that refusal is warranted on this ground alone.

10. West Sussex is covered by a Designation Order made on 24 February 1982 under paragraph 12 of the Caravan Sites Act 1968 as amended. The county's record of providing gypsy accommodation is enviable and unbettered anywhere in the country. While there is adequate accommodation locally, this is not to say that there are any vacant sites. If your client's contention that the social problems that arose at the Middleton site are unchanged is right, then she is not likely to my mind to be able to return regardless of whether the problems are only domestic or of a short term nature as suggested by the council.

11. Your client does not question the appropriateness of the policies or why they should not be applied in this case but rather relies upon the special situation of her case which she says warrant a permission. At the moment the appeal site is unused, except for a lorry loaded with tree roots parked upon it. Until a recent fire it was nonetheless, in the appeal use and the council were pursuing enforcement in the courts. While I accept that the council contend that they are sympathetic to gypsy housing needs and that your client has not sought their assistance in seeking an alternative site, I take the view that a refusal of the application could cause undue personal hardship. It could lead to a tendency for unauthorised camping on sites less suitable than the appeal site to take place. As before stated the county is designated and any such camping could expose your client to further court action.

12. In the light of the overall physical circumstances of the project, the personal circumstances in which your client finds herself and the advice contained in Circular 14/85 reinforcing the more detailed advice on the positive operation of Development control in Circulars 22/80, 14/84, 16/84 and 1/85 I consider that the balance lies in allowing the application as made. Nonetheless, it must be understood that the grant of permission is exceptional and is made because I believe there is a strong and particular need for doing so. Your client asks that a personal condition be imposed to any permission given and the council raise no objections. Such a condition is I believe reasonable and relevant to the development hereby permitted and I shall so attach it.

13. The application is made in full but few details are shown. At the inquiry an agreed list of conditions dealing with landscaping, access and storage and work use were drawn-up. Landscaping conditions are routinely applied to permissions and despite the imposition of a personal condition which effectively places a time limit upon the use of the land, in my view the rural surroundings require such a condition. The access conditions all relate to highway safety matters being concerned with preventing any extra use of the junction of Commonmead Lane with Pagham Road and with getting vehicles on and off the site safely and are to my mind equally as reasonable as the landscaping conditions.

14. The storage condition is asked for because your client, who is in agriculture, has no need of storage space or working areas. However, any condition attached to a planning permission must meet the test set out in paragraph 11 of Circular 1/85 and in this case I do not think it would. The application is for a residential use and industry or the stationing of lorries (unless the lorries are to be used for towing the caravan) is not normally ancillary to a residential use. I therefore think the condition unnecessary).

15. There is no evidence of any shortcomings in services available in the area queried by one local objector. While in the past rubbish may have accumulated as stated in one of the representations to my mind authorised use of the land would help ensure that rubbish would be collected in the normal way. I have taken account of all the other matters raised, including precedent, but they are not sufficient to outweigh the considerations that have led me to my conclusion.

16. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for the stationing of one caravan for one gypsy family on land at the junction of Commonmead Lane/Pagham Road, Pagham, Bognor Regis, West Sussex in accordance with the terms of the application (No: 2/2/86) dated 9 January 1986 and the plans submitted therewith, subject to the following conditions:-

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission;
2. the use hereby permitted shall only be carried on by Mrs Linda S Gaskin;
3. no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping;
4. all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season or others of similar size and species, unless the local planning authority gives written consent to any variation;
5. there shall be no means of vehicular access to the development hereby permitted from Commonmead Lane;
6. sightlines shall be provided at the junction of the proposed access with Pagham Road to a maximum visibility as may be agreed with the local planning authority;
7. development shall not be begun until details of the cross-over between the proposed access and the highway have been approved by the local planning authority; and the building shall not be occupied until that junction has been constructed in accordance with the approved details and to the highway authority's specification;

8. The dwelling hereby permitted shall not be occupied until space has been laid out within the site for vehicles to turn so that they may enter and leave the site in forward gear.

17. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

18. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

I am Gentlemen

Your obedient servant

WILLIAM A GREENOFF DipArch RIBA
Inspector