

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: P/94/14/CLP

LOCATION: Field View
Pagham Road
Bognor Regis

PROPOSAL: Application for a Lawful Development Certificate for a Proposed use of the site for an increase of 2No. caravans to 3No. caravans

DESCRIPTION OF APPLICATION

The application seeks a lawful development certificate for a proposed use of the site for an increase from 2 No. mobile homes to 3 No. mobile homes.

DESCRIPTION OF SITE AND SURROUNDINGS

The site is located within an area predominantly used as rural farmland with sporadic housing. Neighbouring property to the north east is a detached and two storey house with barns to the rear of the site. The site is a tarmacked area which features 2 mobile homes.

RELEVANT SITE HISTORY

P/2/86/ - granted planning permission for the stationing of 1 No. mobile home upon the site.

P/113/07/ - granted planning permission for the addition of 1 No. mobile home meaning that 2 No. mobile homes now benefit from consent.

P/100/10/ - Variation of condition 2 of planning approval P/113/07/.

P/70/12/ - was approved at appeal and granted permission for the addition of a third caravan upon the site.

REPRESENTATIONS

Representations received:

Pagham Parish Council

Pagham Parish Council:-

Pagham Parish Council would like to 'OBJECT' to this application.

Members have been aware of the key concerns expressed by the community and nearby residents when this was first presented for their consideration in 2012 (P/70/12 - determination by Development Control Committee on 10th April 2013 - appealed). We would refer you to our original objections.

The issues of most concern remain as follows:

1. Streetscape - roadside appearance of a key site at entrance to Nyetimber Village.
2. Overdevelopment:- need to ensure that emptying facility for sewerage system not obstructed.
3. Health and Safety:- inadequate sewage disposal facility on site - evidence of sewage overflow into neighbouring property curtilage and pollution of pond.
4. Builders vehicles - construction materials; washing lines; additional travelling caravans on site.
5. Necessary open recreational green space of occupants' children stated to be the adjacent roadside verge.
6. Profile of proposed additional fixed home unit obtruded above access lid to cesspit.

Comments on Representations received:

This application is for a Certificate of Lawfulness and as such can only be determined upon the legal merits of the case. Therefore, whilst these objections could be taken into consideration to the determination of a planning application - the determination of this application can only be upon the legal facts of the case.

CONSULTATIONS

Planning Solicitor

Consultations responses received:

Council's Planning Solicitor:-

EXTRA INFORMATION DATED 9 FEBRUARY

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent email with extra information to the effect that it is impossible to say if the red edge was confined to the caravan or the whole site because the microfiche is black and white .

In full you say :-

"I have been looking at this one and hit a bit of a brick wall. In your consultation response you state that there may well be grounds for refusal if the site boundaries as defined on the applications show the red edge only in relation to the caravan rather than the site in its entirety. I would be grateful if you could provide a brief response in relation to the below findings;

P/2/86/ - The site plan is only available in black and white as the file has been microfiched and as such it is impossible to ascertain the extent of the red edge.

P/113/07/ - On the system this location and block plan are also only available in black and white and as such it is not possible to ascertain the extent of the red edge on the approval. The officers report refers to the site area as measuring 0.069 metres squared which would equate to the entire site which on our system is measured at 0.06 metres squared.

P/100/10/ - This application was for the variation of condition 2 of planning application P/113/07/. The site plan submitted with this application shows the entire site edged in blue with the red edge only around the caravan. The officers report also refers to the site area being 0.059 metres squared.

P/70/12/ - This application was made for permission for the addition of a third caravan on the site and therefore is not of considerable value in the determination of this CLP. However, it is

worth noting that this application also showed the site edged blue with the proposed caravan edged red.

I would be grateful for your comments in relation to this matter."

2.GENERAL RECOMMENDATION

I recommend you GRANT the CLE to intensify use of the site by adding one extra caravan to the existing two.

Reasons are :-

1.The facts and reasons in your email above.

2.The several decision letters submitted by the agent which tend to show adding extra caravans - 1-6 or 6-12 is ok.

3. In this case the increase is a much lesser amount ie 2 to 3 with one additional caravan added.

4.I Say in my previous memo advice ----" I suggest if you can show [as appears is the case] that ref P/2/186 and P/113/07 did not cover the whole site then you may argue to the contrary that ----" use of the site for stationing of caravans is authorised under ref P/2/86 and ref P/113/07" [my underlining]

5. Given what you say it transpires the Council cannot show the previous permissions did not cover the whole site.

6.Even if they did [as I also said] it would still be possible for the applicant to seek a planning permission and impossible for the Council to refuse it or enforce against a third caravan placed on site..

7.None of the planning permissions show a restriction on where on the site a caravan can be placed so a caravan could always move on site anyway!

8 on a balance of probability the applicant is correct here is no change of use by adding a third a caravan and there is no evidence to contradict this ---as I enquired if there might be in pervious advice ---and you confirm there isn't.

RECOMMENDATION AS REVISED

Grant

One extra caravan

One extra caravan placed on site X as applicant identifies on his site plan

Further conditions to be applied by Licensing under Caravan Sites and Control of Development Act 1960

Original memo 26 January

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 may have reasons to refuse, this application for reasons that follow subject to your finding any contradictory evidence.

My advice is somewhat tentative -until more information emerges on definition of red edged boundaries of the site.

It depends on how you define the site boundary.

For the applicant to succeed the site boundary must be the red edge on application ref P/94/14/CLP c covering the 2 existing caravans plus the proposed site of the third on the north east corner ie the whole site .

The application states at para 7 " use of the site for stationing of caravans is authorised under ref P/2/86 and ref P/113/07"

I suggest if you can show [as appears is the case] that ref P/2/186 and P/113/07 did not cover the whole site then you may argue to the contrary that ----" use of the site for stationing of caravans is authorised under ref P/2/86 and ref P/113/07"

The agent does not mention this or site plans.

I add and say --- I suggest these applications nearby may be grounds to support a fresh, third planning application, but doesn't support a CLP.

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

(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 insufficient and is imprecise and ambiguous.

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.

The Agents Claim

The Agent's statement argues that adding a third caravan/mobile home is not "development." So no planning permission is required.

The argument is based on the whole of the site being capable of accommodating three caravans, and there being no "intensification" as a result. This may support a planning application, but not a CLP. [PROVIDED THAT the red edge on the previous applications surrounds the caravans and not the whole site!]

The site History

The site history I have examined or suggest you examine is :-

Ref Number	Item of Evidence	Comment
P/2/86	One caravan for gypsy	I suggest you examine the site plans to see how the red edge defines the site -if the red edge surrounds only the caravan we may have a case to refuse
P/113/07	One caravan for gypsy	I suggest you examine the site plans to see how the red edge defines the site -if the red edge surrounds only the caravan we may have a case to refuse
P/76/10	to amend ref P/2/86	The site is stated in the officers report to measure 0.069 msq ie the dimensions of the caravan not the whole site This has no site plan showing the 1st caravan but the dimensions suggest the planning permission ref P/2/86 covered only the caravan not the rest of the site
P/100/10	to amend P/113/07	The site is stated in the officers report to measure 0.059msq the dimensions of the caravan not the whole site This has a site plan showing the 2nd caravan edged red and the rest of the site edged blue

P/94/14/CLP Present CLP application

I have not been able to examine the whole planning history as refs P/2/86 and P/113/07 are not accessible on the website.

If you are able to access the microfiche, and the plans show the caravans [and not the whole site] edged red then you may have a case to refuse a CLP claiming - "use of the site for stationing of caravans is authorised under ref P/2/86 and ref P/113/07". The reasons being the whole site is not covered by these planning permisisions.

I accept that it may follow that a planning application is submitted based on the previous two permissions, but that may be more arguable than a CLP!

I also accept that if the whole site is covered then case law cited by the agent would tend to be

in favour of an extra third caravan being no change of use ----unless you can show some adverse consequence of the third caravan.

Please come back to me if your searches of the microfiche reveal the red edging is confined to the caravans and not all the site.

I note from the Decision Letters this is an argument that the agent has tried before and succeeded ----in 2 cases out of 3. As I read these cases they are all based on a single planning permission for one whole site , and not [as appears here subject to further investigation of site plans] to separate caravan plots .

4.FURTHER EVIDENCE

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

Please come back to me if your searches of the microfiche reveal the red edging is confined to the caravans and not all the site.

5.TERMS FOR A TENTATIVE REFUSAL SUBJECT TO YOUR FINDING SITE PLANS FOR REF P/2/86 AND P/113/07

1. REFUSE

2. use of the site for stationing of caravans is NOT authorised under ref P/2/86 and ref P/113/07"

3. under ref P/2/86 and ref P/113/07" are shown by site plans only to cover individual and separate caravan plots

Email from planning solicitor dated 16/02/2015

"You ask "can the council restrict by CLE limitation/condition this 3rd caravan [which it is agreed the council have to allow], so as to limit its occupation by gypsies/travellers only"?

I say yes.

I say because:-

1, the applicant bases his application on planning permission refs P/2/86 and P/113/07 -which are for gypsy caravans due to conditions on them

2. so any 3rd caravans must be subject to the same condition ,the applicant arguing that the permissions authorise another caravan based on them

3. We looked at exhibits PB1 and PB2 and PB3 , but these appear to be irrelevant , being for non gypsy occupied caravans ,so the issue wouldn't have arisen there."

Comments on Consultation responses:

Comments noted.

LEGISLATIVE BACKGROUND

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

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect;

In this instance the proposed addition of once caravan to the site will be judged upon the previous planning approvals on the site under reference P/2/86/ and P/113/07/.

Provided the proposed works satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the proposed works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required for them to take place.

CONCLUSIONS

The Council's Planning solicitor in his original consultation response highlighted that should adequate evidence be identified that the red edge (as defined on planning approvals P/2/86/ and P/113/07/) only surrounded the proposed caravans then the Council may have grounds on which to refuse this application. However, examination of these applications has not provided any evidence which contradicts the information provided in this application for a Certificate of Lawfulness. Therefore, subsequent consultation with the Council's Planning Solicitor has revealed that without this evidence there are no grounds by which the Local Planning Authority could refuse this application.

However, the applicant in his submission to the Council states that planning approvals P/2/86/ and P/113/07/ grant consent for use of the site as a "residential caravan site" - however, this is inaccurate as planning approvals P/2/86/ and P/113/07/ grant consent for the stationing of residential caravans in association with settled gypsy accommodation. This restriction on the occupation on the site was shown through the inclusion of a personal occupation restriction upon the original approvals. However, it should be noted that application P/100/10/ varied Condition 2 of planning approval P/113/07/ to restrict occupation of the site to gypsies and travellers. Further consultation with the Council's Planning Solicitor has confirmed that the inclusion of this restriction on occupation of the site should be imposed upon any Certificate of Lawfulness. Therefore, the additional caravan would need to be occupied in accordance with the residential restrictions imposed on the use of the site.

Therefore, it is recommended that the a Lawful Development Certificate is granted for the addition of 1 extra caravan upon the site for the use and occupation by persons of a nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

RECOMMENDATION

PP NOT REQUIRED

The Arun District Council hereby certify that on 19/12/2014 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, would have been lawful within the meaning of section 192 of the Town & Country Planning Act 1990 as the addition of a third caravan upon the site does not constitute a material change of use of the land.

FIRST SCHEDULE

The addition of a third caravan upon the site for the use and occupation by persons of a nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

SECOND SCHEDULE

Field View, Pagham Road, Bognor Regis, West Sussex, PO21 3PY.

EXTENT OF USE

The increase from 2 No. caravans to 3 No. caravans.



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