STEPHEN JUPP
BA(Hons), LLM, MRTPI

CHARTERED TOWN PLANNER

Eleanor Evans - Planning Service
Eastleigh Borough Council
Civic Offices
Leigh Road
Eastleigh
Hampshire
SO50 9YN

Monday, 10 June 2013

Dear Madam:

Re: Little Acre, Allington Lane, West End, Southampton

Continuation of use of land as a single private gypsy plot.

X/13/72534

I write in connection with the above case and respond to your request for me to submit more information on the matter of abandonment.

In my letter which accompanies the application I made the following statement:

> *In the last couple of years the site has not been continuously occupied by Mrs Heathorn for personal reasons. However the use has neither ceased nor been abandoned. The electricity remains connected and continues to be paid. The garage and kennels remain on site.*
>
> *It is therefore clear that the planning permissions continue to have effect and that Mrs Heathorn could move back onto the site tomorrow and comply with the planning permissions.*

The issue of 'abandonment' is well established and commented. I will summaries the position as I understand it to be.

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PARTNERS:

STEPHEN PAUL JUPP
BA(Hons), LLM, MRTPI

LYNN ALEXANDRA JUPP

348 CHICHESTER ROAD
NORTH BERSTED
BOGNOR REGIS
WEST SUSSEX
PO21 5BX

Phone: 01243-822113

Fax: 01243-837939

E-Mail:
steve@planning-solutions.co.uk
lynn@planning-solutions.co.uk

Web Site:
www.planning-solutions.co.uk

Member of the
Royal Town Planning Institute.

The main point, which I consider to be of vital importance, is the House of Lords judgement made in the case of *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] A.C. 132 that *'there is no principle in planning law that a valid planning permission capable of being implemented according to its own terms can be abandoned'.*

In this case the lawful use of the land exists by virtue of the 1991 appeal decision and planning permission 31620/002.

It must therefore follow that whilst the conditions require the use to cease if Amanda Heathorn were to stop occupying the site; it does not mean that the permission has been abandoned. The permission was lawfully implemented and remains extant. Therefore Amanda Heathorn is fully entitled to move back onto the land at any time in the future.

When she has not lived in the caravan she has removed it from the site but has always had the intention or returning at some future date. This is evident by the fact that the electricity has remained connected.

In any event the case of *W.F. Nicholls v Secretary of State for the Environment and Bristol City Council* [The Times, April 10, 1981, McNeill J] adopted four criteria necessary to assess whether *'abandonment'* has occurred. These are:

(1) the physical condition of the property;
(2) the period of non-use;
(3) whether there had been any other use; and
(4) evidence of the owner's intentions.

The Court of Appeal case of *Hughes v Secretary of State for the Environment, Transport and the Regions* [2000] J.P.L. 826 accepted these criteria were accepted as being correct.

Turning to the four criteria I would comment as follows:

(1) The condition of the land has not deteriorated. It remains available for immediate use.
(2) The period of non-use is short term. In any event a period of lack of use for some 35 years has been held not to be abandonment.
(3) There have been no other uses in the intervening periods.
(4) The evidence of the owner is that she has never ceased abandoned the use – it has always been her intention to continue with the lawful use.

I therefore conclude the following:

(1) that the relevant planning permissions cannot be abandoned.
(2) That it any event abandonment has not occurred.

I therefore trust that this information is satisfactory to address the specific issue that you have raised.

However, I ask that if there are any further queries concerning the application that prior to any formal recommendation being formulated, you contact me.

Yours sincerely,



STEPHEN JUPP
BA(Hons), LLM, MRTPI
Chartered Town Planner