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PARTNERS IN PLANNING

Bay Farm

Planning Statement

Bay Farm Grange Road, Bursledon,

Hants, SO31 8GD

Planning Statement

Application under Section 191 of the Town and Country
Planning Act 1990 for use of land for purposes ancillary to
the existing authorised mixed-use site at Bay Farm
Grange Road, Bursledon, Hants, SO31 8GD.

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1. Introduction

- 1.1. This Planning Statement has been prepared in support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) made under Section 191 of the Town and Country Planning Act 1990 (the TCPA, as amended), for the existing use of the land at Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD for: *"use of land for purposes ancillary to the existing authorised mixed use comprising residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage site at Bay Farm"*.
- 1.2. The application comes following the issuing of an earlier CLEUD (LPA ref. LDC/22/93814) on a larger area of land at Bay Farm confirming the authorised use of the site, subject of the certificate, to be a *"Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage"*. The current application site formed part of the original submission of the previous application, however the area of land was removed following concerns being raised by officers that a 10-year continuous use by the primary uses had not been demonstrated for that part of the site, thus allowing for a the CLEUD to be issued on the remaining wider part of the application site.
- 1.3. Within the delegated officer report for LDC/22/93814 (Appendix 1) no consideration appears to have been given to use of the current application site for purposes ancillary to the wider authorised mixed use, despite such a case being put forward within the application at that time. While conceding the point to officers at the time to allow for a positive decision to be issued on the majority of the application site, the applicant contends that it was incorrect to remove the current application site from the previous application. This application therefore seeks to further demonstrate that the land identified on the accompanying Site Location Plan (Ref. 001) is indeed an integral part of the wider mixed-use site having been, and remaining, in ancillary use and part of the same planning unit and therefore in the same mixed use.
- 1.4. The Statement is accompanied by the following documentation:
 - Cover Letter
 - Requisite Application Form (via the Planning Portal Ref: PP-12661348).
 - A Site Location Plan at Scale 1:1250, Ref. Site Location Plan 001
- 1.5. The Local Planning Authority (LPA, or Council) for the site is Eastleigh Borough Council.

Site and Surroundings

- 1.6. Bay Farm is located on the north-east side of an unnamed private roadway which leads south-east from Grange Road to the northeast of the village of Butlocks Heath. The application relates to an area of land that forms part of the wider Bay Farm site, rectangular in shape, measuring some 0.21Ha in area, accessed via an existing gated access off Grange Road located at the southern end of the site.
- 1.7. The site is relatively level and quite open, formerly a field used for growing strawberries, but now comprising of areas permeable hardstanding hardcore and managed grass, bounded by post and rail fencing, with no trees of note on the site. To the north and south



of the site lies open countryside, to the west is an industrial site used in association with the marine industry, with Oak Farm and Pennywise Farm to the east of the site.

- 1.8. Further land in the applicant's ownership (the wider Bay Farm) sits immediately to the south-west of the application site, including land recently granted a lawful development certificate as a mixed-use site (residential caravan site and caravan and vehicle storage), the applicant's own residence and agricultural barns and stables further beyond.



2. Definitions and Guidance

- 2.1. We set out below the background to CLEUD applications before discussing the evidence and drawing conclusions.

Purpose of Section 191 CLEUDs

- 2.2. The purpose of a CLEUD application is to establish that *"...an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990"* (Planning Practice Guidance (PPG) 001 Reference ID: 17c-001-20140306).
- 2.3. For a use to be considered lawful, the use must have been in continuous use for a period of ten years. For the avoidance of doubt, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required (PPG, 001 Reference ID: 17c-003-20140306).
- 2.4. In order to demonstrate this, Planning Practice Guidance (PPG) states that it is the Applicant who is *'responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence'* (PPG, 006 Reference ID: 17c-006-20140306).
- 2.5. As with any application for a Lawful Development Certificate (LDC), the onus is on the Applicant to provide sufficient information to support the application. The PPG sets out that *'In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'* (Paragraph: 006 Reference ID: 17c-006-20140306).
- 2.6. The guidance quoted above provides the basis on which any LDC application under Section 191 should be assessed. This approach has been followed by the Applicant, demonstrated by the presentation of the evidence below to support the case and demonstrate, on the balance of probability, that the use undertaken at the land in question is lawful.

Burden of Proof

- 2.7. The burden of proof is on the Applicant, but the courts have held that the relevant test of the evidence on such matters is 'the balance of probability'. And as this test will



accordingly be applied by the Secretary of State in any appeal against their decision, a Local Planning Authority (LPA) should not refuse a certificate because the Applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'. Moreover, the Court has held (see *F.W. Gabbittas v SSE and Newham LBC* [1985] J.P.L. 630) that the Applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the LPA has no evidence of its own, or from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate 'on the balance of probability'.

- 2.8. It is noted that planning policy and other matters are not relevant for the purposes of S191 LDC applications, which are to be determined on a matter of fact and degree basis. As such, the site's designations or policy status are not relevant to the application, nor are other matters associated with the determination of planning applications.



3. Planning History

- 3.1. A review of the planning history for Bay Farm has been undertaken. The following applications have been identified via the Council's website, and in engagement with the planning team at the LPA during the most recent application relating to the application site.

Application Ref: LDC/22/93814

- 3.2. This application comes following the recent issuing of a lawful development certificate in August 2023 by the LPA which confirmed the lawful use of part of the Bay Farm site (as identified on site location plan accompanying the decision notice (ref.: Site Location Plan – Revision A), seen below) as a "Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage".



Figure 1: Extract from approved Site Location Plan Ref. LDC/22/93814

- 3.3. While the application originally also included the area of land to the northern end of the Bay Farm site, now subject of this application, this area of land was removed to allow for a positive determination of the application, following concerns being raised by officers in relation to the application not, in their opinion, sufficiently demonstrating a continuous ten-year use for mixed-use purposes as specified within the application.

Application Ref: F/10/66559

- 3.4. Planning permission was granted for the Change of use of land to gypsy caravan site accommodating 3no. mobile homes, 3no. touring caravans and 3 Day Rooms, on the 15 February 2012. As can be seen from the schedule of conditions attached to the permission



(detailed below), this was a personal permission with Condition 2 of the permission requiring that the permitted mobile homes were not to be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn & Mr Paul Franklyn.



Figure 2: Extract from location plan (Plan 1) ref. F/10/66559

3.5. Permission F/10/66559 schedule of conditions:

1. *The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1, Plan 2, Plan 3, 10072.*
2. *The mobile homes hereby permitted shall not be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn & Mr Paul Franklyn. Reason: The application has been approved due to the exceptional circumstances of the applicant.*
3. *Within one month of the date of this permission post and rail fencing and conifer hedging between the domestic curtilage and agricultural land as indicated in between points AA on plan 2 shall be erected/planted and thereafter shall remain for the duration that the mobile homes are retained on site.*
4. *The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.*
5. *No part of the land outside the area within the red line on plan 1 shall be used for the purpose hereby approved including those ancillary thereto.*
6. *No more than three mobile homes and three caravans kept for touring shall be stationed on the land at any one time.*
7. *No open storage of goods or materials ancillary to any business activities of the occupants of the mobile home shall take place within the area defined by the red*

and blue line as indicated on the approved 1:1250 location plan (Plan 1).

8. *Not more than 1 commercial vehicle not exceeding 7.5tonnes (gross weight) used in connection with the occupation of the occupiers of the mobile homes on the land and not more than one trailer shall be kept on the land within the red line at any one time. No vehicles or trailers shall be kept on the blue land to the north of the application site.*
9. *Details of the proposed treatment of the site boundaries must be submitted to and approved in writing by the Local Planning Authority and the approved measures must be implemented by a date to be agreed with the Local Planning Authority.*
10. *The boundary hedging along the northwest boundary shall be retained in its entirety at a height of no less than 3m.*

- 3.6. As confirmed through the recent LDC (LDC/22/93814), although the 2012 development could have been considered implemented by virtue of being retrospective, the evidence set out in the LDC application was that the site was in a mixed used materially different to the permission and that the use described in that permission (F/10/66559) had not taken place at any time since it was implemented. This permission has been largely replaced by LDC/22/93814.

Application Ref: Z/35996/002/00

- 3.7. Planning permission was granted for 'Retention of ancillary amenity building' on the 21 June 2001. This building remains on site to date and has relatively recently been refurbished with new toilet, shower and washing facilities having been installed.



Figure 3: Extract from Location Plan ref. Z/35996/002/00

- 3.8. Conditions attached to the permission required that the building was only for domestic purposes only used in conjunction with the existing mobile home, must be used only for purposes incidental to the enjoyment of the mobile home and shall not be used for any business, commercial or industrial purposes and that the amenity building was only to



remain on the site for the duration of the occupation of the mobile home, after which time it shall be removed and the land reinstated to its original state. It is notable that the current LDC application site is included within the redline application boundary for the application (Z/35996/002/00), in some respects acknowledging the wider use of the site for residential purposes and in the same planning unit.

Application Ref: Z/35996/001/00

- 3.9. Following an enforcement notice being served on the site on the 9th April 1999, alleging a breach of planning control that without planning permission there had been a change of use of land from agriculture to part residential use by the siting of a mobile home and touring caravan (LPA Ref: 35996/1), a retrospective application for full planning permission for use of land as gypsy caravan site for one family (one twin unit mobile home) was made on the 30 April 1999.
- 3.10. The application was refused on the 21 September 1999, with 4 reasons cited including: 1. lack of agricultural or recreational justification for development in the countryside area, 2. the site was within a Strategic Gap where development is not normally permitted, 3. the site was considered not to be located within a reasonable distance of schools, medical services, shops and other facilities and 4. the development was considered to have an unacceptable impact on the character and appearance of the countryside.
- 3.11. Both the enforcement notice (Appeal ref: T/APP/W1715/C/99/1022494) and refusal of planning permission (Appeal ref: T/APP/W1715/A/99/1029872) were successfully appealed with the enforcement notice being quashed and planning permission granted for the continued use of land as gypsy caravan site for one family (one twin unit mobile home) on 07 December 1999.

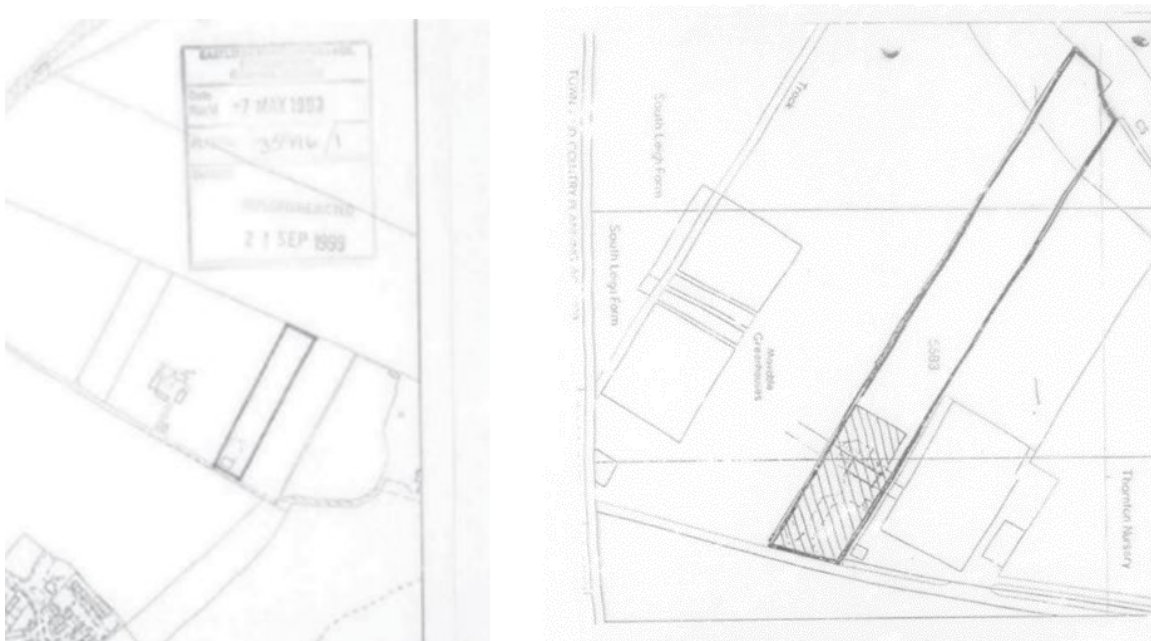


Figure 4: Location Plan (left) and Plan No. NH14 (right) ref. Z/35996/001/00

- 3.12. This permission relates to the applicant's own residence which sits immediately to the south-west of the application site area but includes the whole of the Bay Farm site within



the application's site boundary, suggesting that consideration during the application assessed the site as being a single planning unit.

3.13. Conditions attached to the appeal permission restrict the use of the site:

- a) This permission does not authorise use of the land as a caravan site by any persons other than gypsies as defined in section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended;*
- b) No part of the land outside the area cross-hatched black on Drawing No. NHL4 shall be used for the purposes hereby permitted including those ancillary thereto;*
- c) Not more than 1 mobile home used for human habitation and 1 caravan kept for use for touring shall be stationed on the land at any one time;*
- d) Not more than 2 commercial vehicles not exceeding 7.5tonnes (gross weight) used in connection with the occupation of the mobile home on the land and not more than 2 trailers shall be kept on the land at any one time;*
- e) No storage of goods or materials ancillary to the business activities of the occupants of the mobile home shall take place outside the buildings on the site.*

3.14. While this permission was implemented, clearly the subsequent mixed use of the Bay Farm site does not align with the permission that was granted by the Inspector, as confirmed by the issuing of the 2023 LDC by the authority. This probably remains the operative permission for the southern part of the site, where the applicant lives, but not for the remainder of the site.

Other Relevant History

3.15. Further applications have been made on the wider Bay Farm site and these are summarised for completeness below.

Application Ref: PN/18/84077

- 3.16. An application for Prior Approval under Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) was made on 17 September 2018 for a change of use from agricultural storage to Class C3 dwelling. It was refused on the 24 October 2018, with two reasons cited, relating to a lack of evidence being submitted to support the application to demonstrate to the LPA's satisfaction that the site was used solely for an agricultural use, as part of an established agricultural unit; and further that again there was a lack of evidence submitted to confirm the status of contamination of the land, which could pose a risk to the proposed sensitive use, or how the development would be carried out without a complete reconstruction of the existing building.
- 3.17. Within the Officer's delegated report it is noted that in their assessment of the proposals against the criteria within Class Q, the officer states that: 'It is considered on the balance of all probability that this building is currently still being used in association with the occupants commercial interests but is not currently used for agricultural purposes and was not used solely for an agricultural use as part of an established agricultural unit on 20th March 2013'.



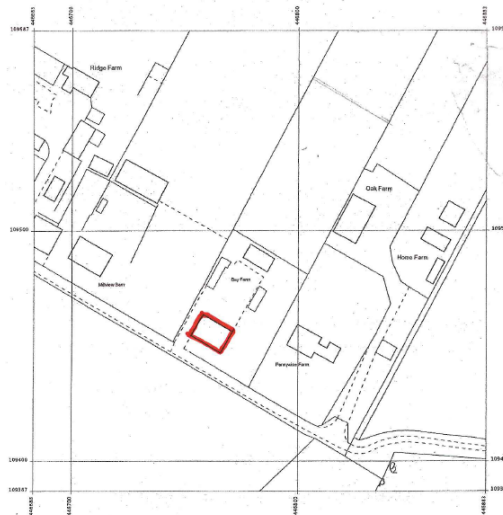


Figure 5: Extract from Location Plan ref. PN/18/84077

Application Ref: F/13/71899

- 3.18. An application for full planning permission was made for Construction of single storey 3/4 bed dwelling, following demolition of existing mobile home & outbuilding was made on 19 December 2012. It was refused on the 13 February 2013, with three reasons cited, including that the proposals physically and visually diminish the Southampton - Hedge End/Bursledon/Netley strategic gap, would result in the loss of a site reserved for gypsies and further that the developer's contributions to offset the impact of the development on local infrastructure had not been secured.
- 3.19. The Decision was subject to an Appeal (Ref: APP/W1715/A/13/2194816). In issuing their decision on the appeal the Inspector upheld the views of the LPA in respect of impacts on Gypsy site provision and the strategic gap and the appeal was dismissed.

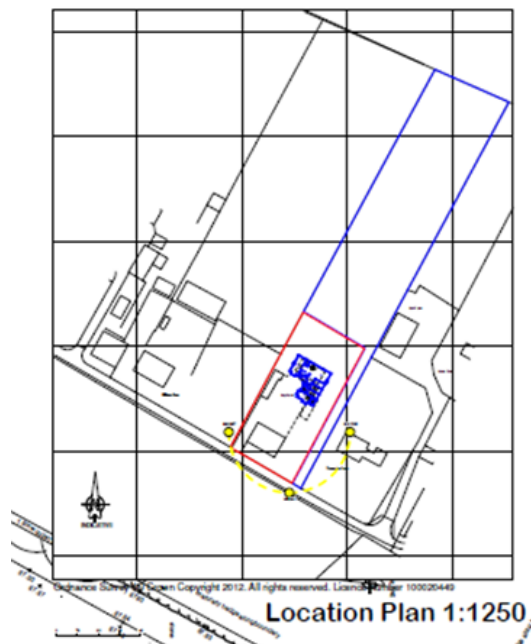


Figure 6: Extract from Location Plan ref. F/13/71899



Discussion

- 3.20. The application site for this CLEUD as shown on the accompanying plan (ref: Site Location Plan 001) has been used for purposes in line with and ancillary to the wider use of Bay Farm for a significant period of time, certainly over 10 years. In terms of what constitutes the planning unit the test is not set out or established in legislature or Government guidance, and therefore the measures used to define such units have therefore been set by the courts. The most commonly referred to and used tests for determining what makes up a planning unit were laid out in *Burdle v Secretary of State for the Environment* 1972.
- 3.21. In summary, this court decision stated that the starting point for any assessment of identifying the planning unit is normally ownership or area of occupation. Burdle stated that there are three possible scenarios, the first being that the entire unit of occupation can be a primary use, with other uses that would be ancillary to that primary use. This would be a single planning unit. The second scenario is where there are several interrelated uses that utilise the entirety of an area of occupation. In these cases, there would be a composite use. The third scenario is where there is more than one distinct and unrelated use taking place, in which case the area of occupation can be divided into more than one separate planning unit.
- 3.22. In consideration of the 1999 and 2001 permissions the whole of the Bay Farm site appears to have been considered as a single planning unit; this included both the current application site and land to the south-west also in the applicant's ownership, in part subject of the recent 2023 LDC application. Having regard to the case of Burdle and its effective working rule, it is considered that the site having been in the same use (including ancillary leisure and recreational uses incidental to the authorised residential use of the wider site) forms part of the wider composite/mixed use planning unit that is Bay Farm.
- 3.23. The Planning History does not reveal anything specific in terms of permissions relating to the current LDC application site, as noted above, other than the site has been granted permission for the change of use of land to a gypsy caravan site under Z/35996/001/00 in 1999, and that an authorised mixed use (residential and caravan and vehicle storage) has been confirmed on land immediately adjacent to the southwest of the application site. There is also not any record of any formal enforcement action been taking that could potentially have implications for this current application.
- 3.24. In determining the 2023 LDC application the LPA discounted the current application site as being in the same mixed use that was ultimately confirmed as being lawful with the issuing of the LDC. However, it is unclear from the officer report (attached at Appendix 1) associated with the 2023 LDC as to why the LPA failed to consider the use of the current application site for ancillary purposes to the mixed use, including such uses as recreation and leisure associated with and incidental to the residential use of the site, as had been put forward within the application, for the periods when the site had not been used for the purposes of caravan and vehicle storage, which appeared to be the primary focus of the LPA.
- 3.25. As we will discuss further below in consideration of the supporting statements, the Bay Farm site has been home to the applicant and their extended family since 1998, with



additional residents moving onto the site in subsequent years. As confirmed within the supporting statutory declarations submitted with the application, all of these residents have had access to the application site and used it for purposes ancillary to the authorised residential uses within the site.

- 3.26. The application site has been used as an integral part of the wider site providing open space for general leisure and recreation activities for residents, ancillary to the authorised residential use at the Bay Farm site, as well as for the storage of vehicles and caravans, and maintenance of the site and equipment, a use which formed part of the wider mixed-use of the site. These leisure, recreation and storage/maintenance uses are discussed within the supporting statements and further in Section 4 below.
- 3.27. The concept of ancillary uses is largely court led. The principle is covered in a number of cases, most notably *Lydcare v SoS* (13/7/08), *Harrods v SoS* (20/7/01) and *R (I'm Your Man Ltd) v North Somerset and the International Helicopter Museum* (26/2/04) (Appendix 2).
- 3.28. It is widely recognised that primary uses of land can often embrace one or more ancillary activities. The essential feature of ancillary uses is that there should be some functional relationship between the ancillary use and the primary use. Further, that the functional relationship should be one that is normally found. The residential use of the wider Bay Farm site has been established through the granting of the 2022 CLEUD. In this case the residential static caravans and touring caravans at the site have little outdoor amenity space directly associated with each unit. The application site has been used for leisure and recreational purposes in association with the residential use of the site; including for use for children's play, holding of picnics, BBQs, fireworks displays, birthday parties and dog walking and exercising. All of these activities are uses that would be seen to take place within a typical residential curtilage and ancillary to the primary residential use, being closely linked and subservient to it. In addition, there has been movement of storage items and maintenance and repair, that would be ancillary to the other elements of the authorised mixed use.
- 3.29. It has long been held that a good way of testing whether one use is ancillary to another is to apply the 'severability test'. Applying this test, one would ask whether the alleged ancillary use could practically and viably operate on its own where the primary use ceases. If it could, then the use is very unlikely to be ancillary as there is no linkage or dependency. It is clear that in this case there would be no need to use the land for leisure and recreation use associated with the residential units and ancillary purposes to the wider authorised mixed use if the residential units/caravan park did not exist. The use is therefore not severable from the primary use.
- 3.30. Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in Section 55 of the Town and Country Planning Act 1990. The definition of 'development' includes building operations (e.g. structural alterations, construction, rebuilding, most demolition); material changes of use of land and buildings; and engineering operations (e.g. groundworks).
- 3.31. The application site forms part of the wider Bay Farm planning unit has been used for purposes ancillary to the authorised mixed use at the Bay Farm site. An ancillary use is not



a use in its own right, it forms an integral part of the primary use; the application site therefore must be considered to be in the same authorised mixed use as the wider Bay Farm site, comprising residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage.

- 3.32. The use of the application site for caravan and vehicle storage has intensified over more recent years spreading across more of the Bay Farm site, particularly from 2019 onwards on the application site which is evidenced within aerial photography supporting the application.
- 3.33. Planning case law¹ has confirmed that intensification does not in itself represent a material change of use. In judgement of the 'Hertfordshire case' (attached at Appendix 3) and consideration of whether a doubling in size of the scrapyard necessarily amounted to a material change of use Justice Ouseley stated (Paragraph 35):

"A change in the nature of activities on the site, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use other than by way of intensification. But if such changes themselves do not bring about a material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects".

- 3.34. Reed v SOS [2014] (Appendix 4), made similar conclusions about the circumstances in which a material change of use could be considered to have taken place, in the context of a mixed-use site where one element had intensified: with Lord Justice Sullivan stating:

"The question was not simply whether the number of caravans had increased, it was whether the definable character of the mixed use had materially changed".

- 3.35. The intensification of the use of the application site that has occurred in more recent years will not materially have changed the character of the use beyond that mixed-use which has already been granted on the wider Bay Farm site and that has taken place on the application site well in excess of ten years, including the ancillary residential uses more prominent prior to 2019.

¹ East Barnet UDC v British Transport Commission [1962] and Palsar v Grinling [1948]; and further clarified by the Court of Appeal in the case: Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited [2012] EWCA Civ 1473 (referred to as the 'Hertfordshire' case).



4. Supporting Evidence

- 4.1. In this section we set out the evidence that supports the ancillary use that has taken place continuously for more than 10 years in the application site. In order to establish the lawfulness of the existing use of the land for purposes ancillary to the authorised mixed-use of residential caravan site and caravan storage and vehicle storage, it is necessary to provide evidence, that on the balance of probability, this use has been in operation for at least 10 years.
- 4.2. The evidence submitted with this application includes thirteen witnessed statutory declarations from persons of whom largely have an intimate knowledge the application site and how it has evolved and been used over the years (Appendixes 5 to 17) and history aerial photography (Appendix 18).
- 4.3. When considering the evidence submitted, discussed further below, overall, the application demonstrates that the application site has been used for purposes ancillary to the wider authorised mixed use and therefore is in the same mixed use and that such use has been carried out on a continuous and uninterrupted basis for over ten years.

Supporting Statutory Declarations & Statements

- 4.4. The applicant and owner of the site, Deborah Kempster, has submitted a witnessed Statutory Declaration which is attached at Appendix 5 of this Statement.
- 4.5. Mrs Kempster is the sole owner, acquiring the site in 1989. She has lived on the Bay Farm site and operated it with her husband (Mark Kempster) for some 25½ years. They live in a static caravan towards the front (south-western end) of the Bay Farm site, which was granted planning permission at appeal in 1999.
- 4.6. The applicant confirms that the land marked on the site location plan accompanying the application (Ref. Site Location Plan 001), 'the rear field' has been an integral part of the Bay Farm site used continuously for ancillary purposes to the authorised use of the Bay Farm site, including the mixed-use at the Bay Farm site, comprising of residential caravan site, caravan storage and vehicle storage, recently confirmed through the granting of a Lawful Development Certificate ref. LDC/22/93814. The rear field and boundary fencing has been regularly maintained.
- 4.7. The applicant has also seen the historic aerial photographs attached at Appendix 18 and confirms that these reflect her own recollections of the site.
- 4.8. The applicant confirms that the rear field, when not in use for storage has always been used for leisure and recreation by her family, other people living on the site and people storing their vehicles and caravans at the Bay Farm site. Over the years the applicant confirms that the family have regularly used the rear field for family picnics, play games, football, rounders, barbecues and enjoyed firework nights there, inviting members of the family and friends over. Further that with both of her daughters now having children of their own that they have also used the rear field for their children to play in and to hold family gatherings, such as birthday parties.



- 4.9. The applicant also confirms that she has used the rear field on a daily basis for exercising her family's own dogs, being a licenced breeder of dogs. While the rear field has been more intensively used for caravan and vehicle storage over more recent years (2019 onwards), the use of the land has always been ancillary to the wider site and associated residential use and therefore forms part of the same planning unit.
- 4.10. The application is also supported by a Statutory Declaration by the applicant's husband, Mark Kempster (attached at Appendix 6). Mark has extensive knowledge of the site, right back to his childhood when his father leased land adjacent to the application site and he reaffirms the statements made by his wife.
- 4.11. Kelly Kempster is Debbie and Mark's youngest daughter and provides a supporting Statutory Declaration at Appendix 7. Kelly has lived on the Bay Farm site for most of her life (from the age of 7 months in 1998) and remains living on the site to date in a static caravan known as the Lodge. Kelly has an intimate knowledge of the Bay Farm site, including the application site.
- 4.12. She provides confirmation of use of the application site for ancillary residential purposes, from when growing up to the current day, highlighting use of the site as an area for play, both as a child growing up with her sister, cousin and friends and now for her own children. Kelly recounts regular family gatherings being held in the rear field and regularly walking and exercising her and her Nan's dogs in the field. Kelly also recalls the field being maintained by a local resident (Tony Waite of Ridge Farm to the west of Bay Farm, (now deceased)).
- 4.13. Janie Kempster is Debbie and Mark's eldest daughter and provides a supporting Statutory Declaration at Appendix 8. Janie lived on the Bay Farm site for most of her early life from the age of 8 years in 1998, until leaving the site in 2019. Janie originally lived with her parents until moving into her own home (Grange Stables) at the Bay Farm site in 2009, when her eldest son was born. As with her sister Janie has an intimate knowledge of the Bay Farm site, including the application site.
- 4.14. Similar to her sister Janie provides confirmation of the historic use of the application site for ancillary residential purposes, highlighting use of the site as an area for play, both as a child growing up with her sister, cousin and friends, and also more recently for her own children. Janie again recounts regular family gatherings being held in the rear field, including holding birthday parties for her children and also regularly walking and exercising her dogs in the field, with her running her own dog business since 2008.
- 4.15. A Statutory Declaration from Daniel Jackman is provided at Appendix 9. Dan is a current resident of the Bay Farm site living in a touring caravan at the site for some 13½ years, and again has an excellent knowledge of the Bay Farm site.
- 4.16. During his time at Bay Farm Dan confirms that he has had various roles involved with the maintenance and upkeep of the site and continues to do so to the current day. Dan also confirms the application site being used for ancillary residential purposes as an area of play for the kids living on site, and for the holding of parties, BBQs, annual fireworks displays and dog walking and exercising.



- 4.17. A Statutory Declaration from Ian Hodges is attached at Appendix 10. Similar to Daniel Jackman, Ian is a resident of Bay Farm and has an excellent knowledge of the application site having lived at Bay Farm for some 16½ years and assisted in maintaining the site over his time living at the site.
- 4.18. In addition to Ian confirming witnessing others using the site for ancillary residential purposes, he also confirms his own family's use for such when they regularly visited him at the site.
- 4.19. Ian confirms that the rear field has been in continuous use for purposes ancillary to the wider authorised use and has been an integral part of the wider Bay Farm site.
- 4.20. At Appendix 11 is a Statutory Declaration from June Paul, the applicant's mother. June again has a good knowledge of the site from when her daughter moved on to the site in 1998 up until the current day, regularly visiting the site. June confirms enjoying the open space that the rear field provided, playing with her grandchildren and great-grandchildren, attending family gatherings and walking and exercising her and the family's dogs. June further recalls witnessing other people walking their dogs on the site and other children playing in the rear field.
- 4.21. At Appendix 12 is Statutory Declaration from Sharon Martin, Janie Kempster's Mother-In-law. Sharon's knowledge of the site is gained from regular visits to the site to see her family and babysitting for her grandchildren from 2009 onwards.
- 4.22. Sharon confirms the use of the rear field for purposes ancillary to the residential use within Bay Farm, including the holding of birthday parties, BBQs and fireworks display, as an area for children to play in and also for people exercising their dogs.
- 4.23. Fern Harris is a current resident at the Bay Farm site living in a static known as Safe Haven since March 2015, she provides a statutory declaration (Appendix 13) confirming that the rear field was used by other residents of the Bay Farm site throughout the year for the following for ancillary residential purposes including as an area of play for the children living on site, parties, BBQs, dog walking and exercising and annual fireworks displays. And further that while she has lived at the site, she has regularly used the rear field for walking her dogs twice a day.
- 4.24. Fern further confirms that since 2019 the rear field has also been used at times by people storing vehicles and caravans associated with the wider authorised Bay Farm mixed use site.
- 4.25. A Statutory Declaration from Carter Harris is attached at Appendix 14. Carter confirms living on site with his mother Fern Harris at Safe Haven between 2015 and 2020 and having use of the rear field for his hobby of building and riding motorbikes while living on site. Carter also confirms attending fireworks displays and BBQs in the summer, that were held by the Kempsters in the rear field.
- 4.26. A Statutory Declaration from Sarah Gomie of 2 Purbrook Cottage, Hamble, SO31 4SF is attached at Appendix 15. Sarah's knowledge of the site stems from her using the Bay Farm site to store her caravan, when not in use, which has taken place since 2009. Sarah confirms when they are at their caravan, either taking it away or cleaning and airing it



ready for holidays they have witnessed activities taking place in the rear field just past where their caravan is stored. These activities have included children playing and whizzing around the field on their bikes. Sarah also confirms seeing others who also store their caravans at Bay Farm using the rear field for exercising their dogs before setting off on holidays.

- 4.27. Similar to Sarah Gomie, Tom Pengelly has been using the Bay Farm site to store his caravan since 2009 and he provides a Statutory Declaration at Appendix 16. Tom confirms having use of the rear field for both exercising his dog and setting out and airing his caravan and awning before going off on holiday. Tom also confirms that over the years the rear field has been maintained.
- 4.28. At Appendix 17 Carina Emmerson of "Marvellous Mascots" confirms providing children's entertainment services (Minion cartoon character) from her business at that time for a birthday party for Janie Kempster's children in the rear field in June 2015.

Historic Aerial Imagery

- 4.29. Historic aerial photography (publicly available) dating from 2012, 2013, 2014, 2015, 2017, 2018, 2019, 2020, 2021, 2022 and 2023 provide visual evidence of the use of the site for storage of vehicles and caravan uses and ancillary residential purposes and how this has continued to the present day, with clear fluctuations, but no changes in use.
- 4.30. In 2012 the application site is retained as amenity land, clearly forming part of the wider site. There evidence of scarring of the grassland suggesting an active use of the site.
- 4.31. In 2013 there is no significant change in the context or appearance of the site since 2012
- 4.32. In 2014 scarring of the of the surface of the site evident with vehicle tracks up the western boundary and through the centre of the site and two patches of bare ground. No significant natural growth evident within the site, with grass and scrub being cut back regularly, as confirmed in the support statements accompanying the application.
- 4.33. Between 2015 and 2017 there is no significant change in the context or appearance of the site from previous years. As with previous years land has appearance of being maintained with no significant growth of grass and scrub.
- 4.34. In 2018 post and rail fencing introduced to the southwestern boundary of the application site, otherwise no significant change in the context of the site.
- 4.35. In 2019 an expansion of hardstanding from main Bay Farm site on to amenity land area is evident. There is also the introduction of caravan and vehicle storage into the application site. This is a primary use encroaching into the ancillary use area, which cannot by definition change the use of the land.
- 4.36. In 2020 further expansion of vehicle and caravan storage in the northeastern corner of the site is evident from previous years.
- 4.37. By 2021 hardstanding has been introduced to much of the site. There is an increased number of vehicles and caravans sited along the northern and north-western boundaries of the site.



- 4.38. In 2022 there is no significant change in the context of the site with use and appearance of the site largely remaining as in the previous year, albeit with a slight intensification of vehicle storage within the site.
- 4.39. In 2023 again no significant change in the context of the site with use and appearance of the site largely remaining as in the previous year, albeit with a slightly reduced number of vehicles and caravans evident within the application site.
- 4.40. While the aerial photography does not provide any conclusive evidence of the site being used for residential purposes, other than the site being maintained, it does demonstrate that the site has not been used for any other purpose other than those associated with the authorised mixed use of the wider Bay Farm site.



5. Conclusions

- 5.1. An application for a Lawful Development Certificate has been submitted for the confirmation that the existing use of the land detailed within the application is for purposes ancillary to wider use of the Bay Farm site, which comprises a mixed-use site including residential caravan site, caravan storage and vehicle storage. Notwithstanding the mixed uses taking place on site, the site is in single ownership.
- 5.2. In 2023 a lawful development certificate (ref. LDC/22/93814) confirmed land at Bay Farm to be in a mixed use ("Mixed use of the site for residential caravan site (3 mobile homes and 3 tourers) and caravan and vehicle storage"), however the current application site, in the applicant's opinion, was incorrectly excluded from the area of land covered by the certificate. The land has always formed an integral part of the wider site and in the same mixed use, albeit for ancillary purposes.
- 5.3. The relevant test is whether, on the balance of probabilities, that the evidence submitted by the applicant is sufficient to demonstrate that the use existed for a continuous period of 10 years.
- 5.4. There are thirteen statutory declarations, one from the owner, who is the applicant, with a long knowledge of the site, confirming the site having been used for purposes in line with, and ancillary to, the authorised mixed use, including use of the land for leisure and recreation incidental to the residential use taking place at the site. There is further documentary evidence to support the existence of the caravans and vehicles being stored on site, via Google Maps aerial photography, which is in association with the storage element of the mixed use.
- 5.5. The evidence above indicates that the site has clearly been used for purposes ancillary to the lawful mixed use for at the very least over the preceding ten years, and while the use of the site for caravan and vehicle storage has intensified over more recent years the nature of the use has not resulted in any material change of use or ceased at any point in time.
- 5.6. Aerial photography demonstrates that no other activity has taken place on the site. And this reflects the applicant's, her partner's and persons living on site recollection of the use of the site.
- 5.7. There is no evidence of any other use being lawfully established on the site, according to planning history or aerial photographs or that the mixed use has ever been discontinued or abandoned.
- 5.8. As such, it is concluded that the application should be approved, and a lawful development certificate is issued under Section 191 of the Town and Country Planning Act 1990 for the existing use of the site for a mixed use comprising of residential and caravan and vehicle storage.



Appendixes



Appendix 1: Officer Report LDC-22-93814



Land to which this relates Bay Farm, Grange Road, Bursledon

The application is for “mixed use residential caravan site, roofing contractor, caravan storage and vehicle storage”

The red line goes round the land behind Bay Farm and does not include the front site which was originally granted permission for the stationing of a mobile home for a gypsy site.

The evidence submitted with the claim alleges that the occupants in the application site do not identify as gypsies or have a nomadic lifestyle.

Mr Kempster who lives in the mobile home at the front of the site outside of the red line identifies himself as a gypsy, his wife (the applicant) and children and grandchildren that live within the application site do not and neither do the other occupants of the site with the red line of the application.

The applicant asserts that the 2012 permission F/10/66559 continues to operate in the blue land. In the red land a materially different land use has taken place for more than 10 years.

The applicant claims that there is also caravan storage taking place at the site, and that the use has fluctuated over the years but has been continuous and that it varies between summer and winter but there have been up to 60 caravans on site. There have been no invoices/receipts or proof of customers provided for this activity.

The applicant states that the persons living in the mobile home are

The Lodge - Mobile Home B – occupied by Kelly Kempster, the applicant’s daughter and she does not identify as a gypsy, also in his unit is Kelly’s partner and two children.- Kelly Kempster was named in the planning condition.

Safe Haven - Mobile Home C – is occupied by Fern Harris who purchased it from Paul and Julia Franklin in 2014, she doesn’t identify as a gypsy – Paul and Julia Franklin were named in the planning condition.

Grange Stables - Mobile Home D – Was occupied by Lynn Brinley who passed away but prior to this was occupied by Janie Kempster who was named in the planning condition.

Council Tax records and Elections show that these occupants lived in the mobile homes on the site either currently or previously as do the Statutory Declarations provided to support the application.

Evidence

5th April 2022 – EBC planning history for the site

13th September 2012 – Caravan site licence for planning permission Z/35996/001 and F/10/66559 – for 4 residential caravans and space for parking 4 touring caravans (this includes the Bay Farm pitch)

02/04/21 – aerial photo of site – showing the rear field clear of items

03/03/13 – aerial photo of site – showing the rear field clear of items

15/04/14 – aerial photo of site – showing the rear field clear of items

22/04/15 – aerial photo of site – showing the rear field clear of items

21/06/17 – aerial photo of site – showing the rear field clear of items

06/07/18 – aerial photo of site – showing the rear field clear of items

15/09/19 – aerial photo of site – showing an increase in hardstanding on the amenity land and increase of vehicles and touring caravans

26/05/20 – aerial photo of site – showing hardstanding and vehicles and touring caravans

18/07/21 – aerial photo of site – hardstanding now covering most of the rear field and increase in number of vehicles and caravans

2022 – aerial photo of site – hardstanding

Statutory Declarations

SAFE HAVEN

Julia Franklin of 7 Sylvan Lane used to live in Safe Haven

Lived in mobile home Safe Haven for 4 years from 2011 to 2015, does not identify as a gypsy or a person with a nomadic lifestyle

Julia Franklin states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned

Fern Harris of Safe Haven,

Fern Harris does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 8 years from March 2015.

Fern Harris states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

GRANGE STABLES

Janie Kempster of Hilvenor, Victoria Road, Netley Abbey lived in Grange Stables

Janie Kempster does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 10 years from 2009 to 2019.

Janie Kempster states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

Linda Brindley (deceased lived in Grange Stables)

Linda Brindley (deceased) did not identify as a gypsy or a person with a nomadic lifestyle and moved onto the site in 2019 and passed away in October 2020

Linda Brindley daughter in law states in email that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

THE LODGE

Kelly Kempster of The Lodge, Bay Farm

Kelly Kempster does not identify as a gypsy or a person with a nomadic lifestyle and has lived on the site for 3 years from 2020 to current.

Kelly Kempster states that the land has been used for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage during the time she has lived there. That there have been a number of people living on the site, both in mobile homes and touring caravans stationed at the site. And that the use has not been abandoned.

Applicant Stat Dec

Deborah Kempster of Bay Farm

Have lived and operated the site with husband for 24 years.

The grassed area of land at the rear of the site, when not in use for storage has also been used for leisure and recreation by my family and other people living on the site and for exercising dogs.

The number of caravans on site has fluctuated over the years and varies between summer and winter months and has been up to 60 caravans stored out of camping season.

The mobile homes have been continuously occupied over the ten years.

There are four people living on the site but there have been up to 6 or 7 people living on site within caravans, none of these people identify as gypsies.

Since purchasing the site in 1989, storage space has been provided for vehicles including boats, cars and vans. Levels of storage has gradually increased over the years.

Mark Kempster of Bay Farm

Have lived on site for 24 years.

The land has been used continuously for a mixed-use comprising of residential caravan site, caravan storage and vehicle storage since 2009. The grassed area of land at the rear of the site, when not in use for storage is used for leisure and recreation including dog exercising by family and other people living on the site.

The number of caravans on site has fluctuated over the years and varies between summer and winter months and has been up to 60 caravans stored out of camping season.

The mobile homes have been continuously occupied over the ten years.

There are four people living on the site but there have been up to 6 or 7 people living on site within caravans, none of these people identify as gypsies.

Since purchasing the site in 1989, storage space has been provided for vehicles including boats, cars and vans. Levels of storage has gradually increased over the years.

Touring Caravans

Daniel Jackman

Has lived in a caravan at Bay Farm for 12 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been 5 or 6 other people living on site over the last ten years.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022.

Ian Andrew Hodges

Has lived in a caravan at Bay Farm for 15 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been 5 or 6 other people living on site over the last ten years.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022

He pays rent to Mark and Debbie Kempster who have run the site since taking over from the previous owners.

Simon Venn –

Has lived in a caravan at Bay Farm for 16 years and does not identify as a gypsy or a person with a nomadic lifestyle. The caravan has been his sold and main residence throughout the period he has been at the site.

The land has been used continuously for a mixed-use comprising residential caravan site, caravan storage and vehicle storage since he has lived on the site. There has always been at least 4 other people living on site.

Towards the back of the site there is an area of land that when not used for vehicle and caravan storage is used for recreation, including dog walking by people living on the site.

Until recently Stuart Hopkins lived on the site for the same amount of time also until he passed away in March 2022

Stuart Hopkins – lived on the site for 11 years before passing away.

Email statement by Kim Lewis

Confirm that for more than 15 years have been a regular taxi driver for Kempster Family at Bay Farm and pick up for nights out and have picked up others that occupy caravans on Mark and Debbie's land and take them back to their caravans.

Statement of Philip Cullins of Abbey Ashpalt Roofing Ltd

Director of Abbey Ashpalt Roofing Ltd company was founded in 2009 and since that date the yard was at the rear of Bay Farm. There has always been people living in caravans on the land just up from the yard.

Roofing Contractors business

There are no signs of a roofing business run from the application site, there was a pile of builders tiles which Mr Kempster said were his. The roofing business Abbey Ashpalt Roofing Ltd has moved to the front of the property and outside of the application site.

Google earth

April 2012 – approx. 20 caravans on site, nothing on rear field

April 2014 – approx. 16 caravans on site, nothing on rear field

Sept 2014 – approx. 17 caravans on site, nothing on rear field

April 2015 – approx. 16 caravans on site, nothing on rear field

Sept 2015 – approx. 15 caravans on site, nothing on rear field

May 2017 – approx. 11 caravans on site, nothing on rear field

July 2018 – approx. 15 caravans on site, nothing on rear field

Sept 2019 – approx. 32 caravans on site, signs of storage in rear field

April 2020 – approx. 41 caravans on site, intensification of storage in rear field

May 2020 – approx. 42 caravans on site, intensification of storage on rear field

July 2021 – approx. 39 caravans on site, intensification of storage on rear field

January 2023 – approx. 27 caravans on site,

Planning permission

The planning permission was granted on 15 February 2012 retrospectively for 'change of use of land to gypsy caravan site accommodating 3no. mobile homes, 3no. touring caravans and 3 day rooms'

Conditions

2) the mobile homes hereby permitted shall not be occupied except by Miss Janey Kempster, her partner and their children; Miss Kellie Kempster, her partner and their children; and Mrs Julie Franklyn and Mr Paul Franklyn. Reason: The application has been approved due to the exceptional circumstances of the applicant.

4) the site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006. Reason: This permission has been granted due to the exceptional circumstances of the applicant.

5) no more than three mobile homes and three caravans kept for touring shall be stationed on the land at any one time. Reason: To protect the character of the area.

Conclusion

The use of the rear field for the storage of caravans seems to have started around July 2019 and increased from there. It is not clear the terms of the storage, no receipts or invoices have been provided or stat decs from customers for the storage of the caravans on site.

The storage of motor vehicle seem to be part of Mr Kempsters incidental use of the site, there has been no evidence produced to show that they are stored for customers or that they are sold from there.

The relevant test is whether on the balance of probabilities, that the evidence submitted by the applicant is sufficient to demonstrate that the use existed for a continuous period of 10 years over the whole land.

Taking all the evidence and considering it alongside the Council's internal records and the aerial photos there is insufficient evidence to support the use alleged in the application of a "mixed use residential caravan site, roofing contractor, caravan storage and vehicle storage" in excess of ten years. I therefore recommend that the application is refused.

The Council has considered the aerial photos and can see that the rear field has not been used for storage of caravans and that it seems that from 2019 onwards it increased and expanded onto that area.

In respect of the roofing storage this has now moved onto the front of the site and the items that were on site Mr Kempster said was his.

Following conversations with the Agent it has been agreed to reduce the red line of the site to omit the rear field and the description to "Mixed Use Site – Residential caravan site and caravan and vehicle storage"

**Appendix 2: I'm Your Man Ltd v Secretary of State for the Environment,
1998 WL 1042297 (1998)**



I'M Your Man Limited v Secretary of State for the Environment



Positive/Neutral Judicial Consideration

Court

Queen's Bench Division

Judgment Date

4 September 1998

CO/728/98

High Court of Justice Queen's Bench Division (Crown Office List)

1998 WL 1042297

Before: Mr Purchase QC (Sitting as a Deputy High Court Judge)

Friday, 4 September 1998

Representation

Mr P Brown (Instructed by Messrs Davies & Partners , Gloucester GL4 7RT) appeared on behalf of the Applicant.

Mr R Singh [Ms S Davies – for judgment] (Instructed by The Treasury Solicitors) appeared on behalf of the Respondent.

Judgment

Friday, 4 September 1998

The Deputy Judge:

In this application I'm Your Man Limited applies under [Section 288 of the Town and Country Planning Act 1990](#) , to quash the decision of an Inspector appointed by the First Respondent dismissing the Applicant's appeal from the refusal by the Second Respondent of planning permission for the permanent use for sales, exhibitions and leisure activities of buildings at Weston Business Park, the Airport, Locking Moor Road, Weston-Super-Mare. This application gives rise to an important point of principle concerning “limitations” imposed on planning permission. Put shortly, on the 15th February 1995 an Inspector on appeal granted planning permission for the use of the buildings for “sales, exhibitions and leisure activities for a temporary period of seven years”. No condition was imposed requiring cessation of that use at the end of seven years. Would continuance of the use beyond seven years constitute a breach of planning control? In other words, was the permission in effect permanent or temporary. Additionally there are related issues (1) whether the status of the permission was material to the decision with which this application is concerned and (2) discretion. Mr Paul Brown, who appears for the Applicant, accepts that, if on its true construction the earlier permission was temporary, his application must fail. I will deal with the main issue before considering the other issues.

Permanent or Temporary?

Background

The appeal premises comprise two large hangars and ancillary accommodation on the former Weston Airport. In 1994 application was made for planning permission for the use of the buildings for sales, exhibitions and leisure activities for

a temporary period of seven years. An appeal was made against non-determination. The appeal was conducted by written representations. In his decision letter dated the 15th February 1995, at paragraph 6, the Inspector identified the main issue as “the effect of the vehicle movements the proposal would generate on the free and safe flow of traffic on the A371.” At paragraph 14 he concluded that the traffic generated would not be unduly detrimental in that respect. At paragraph 18 he allowed the appeal and granted “planning permission for additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years at Weston Business Park ... in accordance with the terms of the application” subject to various conditions, none of which required cessation of the use after seven years. On the 17th April 1997 the Applicant applied for the permanent use of the premises for the same purposes. That application was refused. The Applicant appealed, relying, inter alia, on the ground that the 1995 permission was in effect a permanent planning permission. The appeal was also conducted by written representations. In the representations at para. 1.03, the Applicant explained that what was sought was confirmation that the permitted use was permanent. In [Section 5](#) of the representations it set out reasons why the 1995 permission was in effect permanent. In their response the Second Respondent commented on the Applicant's representations, including the following:

“8.1 Much of the (Applicant's) statement strives to justify why the existing seven year temporary consent is in fact permanent ... the Local Authority would suggest that the temporary seven year period was implicit in the previous consent and unambiguously stated within the description. Seven years was the period applied for and it was clearly on this basis that the Inspector reached his decision. There appears to the Local Authority to be no justification whatsoever either legislative or otherwise to disregard this unequivocal statement by the Department of the Environment.

8.2 The authority fails to understand the (Applicant's) claim that the permanent use of the site would somehow be exempt from enforcement action. It is a statutory obligation of any local planning authority to investigate breaches of planning permission and then act accordingly.”

In his decision letter dated the 16th January 1998 the Inspector referred to the competing contentions at paragraphs 20 and 21. He continued:

“Whereas as I accept as a general point the thrust of your argument that the 1994 and 1995 permissions are material considerations in relation to this appeal, it is not for me to reach a conclusion as a matter of law as to whether or not the latter consent is of a temporary or permanent nature. Nevertheless, the fact that planning permission was granted conditionally on appeal in 1995 for the development now applied for is clearly a matter to which I shall afford weight in this appeal.”

The Inspector did not thereafter make a clear finding whether or not the 1995 permission was temporary or permanent in effect. I will deal with the remainder of the decision letter, so far as relevant, later in this judgment. He dismissed the appeal.

The Statutory Provisions

It is convenient in the first place to set out the relevant statutory provisions. By [Section 57\(1\)](#) of the 1990 Act, subject to the subsequent provisions of the Section, planning permission is required for the carrying out of any development of land. So far as relevant, by [Section 55\(1\)](#) development means the making of any material change in the use of any buildings or other land. By [Section 58](#) planning permission may be granted by a [Development Order](#) or by the Local Planning Authority (or the Secretary of State) on application to the authority in accordance with a [Development Order](#).

By [Section 60\(1\)](#) planning permission granted by a [Development Order](#) may be granted either unconditionally or subject to such conditions or limitations as may be specified in the Order. I would comment that that provision has remained in substantially the same form since the Town and Country Planning Act 1947 (see 1947 Section 13(2)). Thus, in the [Town and Country Planning General Development Order 1988](#) and the current [General Permitted Development Order 1995](#) planning permission was and now is granted “subject to any relevant exception, limitation or conditions specified in the schedule”. For example, [Part 4, Class B](#) of the 1995 Order permits the use of land for not more than 28 days in total in any calendar year subject to specified limitations and exceptions. While no conditions are specified under Class B, Class A (which deals with temporary buildings) is subject to conditions requiring that the buildings be removed and the land reinstated.

By [Section 70\(1\)](#) of the 1990 Act, where an application is made to the authority for planning permission, the authority may grant planning permission either unconditionally or subject to such conditions as it thinks fit or it may refuse permission. By [Section 79](#) and [Schedule 6](#) the Secretary of State or an Inspector on appeal may deal with the application as if it had been

made to him in the first instance. Those provisions have also remained in substantially the same form since the 1947 Act (1947 Sections 14(1) and 16(2)).

[Section 72\(1\)](#) provides:

“Without prejudice to the generality of [Section 70\(1\)](#), conditions may be imposed on the grant of planning permission under that section ... (b) for requiring the removal of any building or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of the specified period, and the carrying out of any works required for the reinstatement of land at the end of that period.”

[Article 22 of the General Development Procedure Order 1995](#) requires that a decision notice shall “state clearly and precisely the full reasons ... for any condition imposed ... ”. [Section 78 \(1\)\(a\)](#) provides a right of appeal where the Planning Authority “refuse an application or grant it subject to conditions”.

I note that, in contrast to the power granted in respect of the grant of planning permission by [Development Order](#) (which expressly includes the imposition of limitations) and the provisions specifically providing for the imposition of and appeal against conditions, there is no express power to impose limitations on the grant of planning permission on an application.

[Section 57\(2\)](#) provides:

“Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted”.

[Section 72\(2\)](#) provides:

“A planning permission granted subject to such a condition as mentioned in sub-section (1)(b) is in this Act referred to as “Planning permission granted for a limited period”.”

[Section 72\(1\)\(b\)](#) (to which I have referred above) provides for the imposition of a condition requiring the removal of buildings or works for the discontinuance of use of land at the end of a specified period. The definition does not, therefore, include the imposition of a time limit by limitation. In contrast, [Section 57\(3\)](#) provides:

“Where by a Development Order planning permission to develop land has been granted subject to limitations, planning permission is not required for the use of that land which (apart from its use in accordance with that permission) is its normal use.”

That provision was first introduced by amendment to Section 18 of the 1947 Act by [Section 58 of and the Seventh Schedule to the Town and Country Planning Act 1959](#) . I deal with the context of those amendments later in this judgment.

[Section 91\(1\)](#) of the 1990 Act provides for the imposition of a condition requiring commencement of a permission within a specified period. By [Section 91\(4\)](#) “Nothing in this section applies (a) to any planning permission granted by a [Development Order](#) ... (c) to any planning permission granted for a limited period ... ”. Thus the section does not apply to permissions granted by a [Development Order](#) , whether subject to a limitation or not, but, by virtue of the definition in [Section 72\(2\)](#) (see above), planning permission granted on an application is excluded if limited to a specific period by condition but not otherwise.

[Part VII](#) of the 1990 Act deals with enforcement. [Section 171\(1\)](#) provides, so far as relevant:

“For the purposes of this Act (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, constitutes a breach of planning control”.

I should briefly deal with the statutory pedigree of this provision. Section 23(1) of the 1947 Act did not refer to the failure to comply with a limitation. In *Cater v Essex County Council (1960) 1 QB 424* the Divisional Court held that continuation of a temporary use beyond the 28 day period permitted under what was then Class IV of the General Development Order 1950 did not constitute a breach of planning control under that section. Following that decision, Parliament enacted [Section 38 of the Town and Country Planning Act 1959](#), which provided, so far as relevant:

“(1) Where by Development Order (whether made before or after the commencement of this Act) permission is granted for any development subject to limitations specified in the Order, Sections 23 and 24 of the Act of 1947 (which relate to the enforcement of planning control) shall, subject to the provisions of this Section, have effect in relation to any non-compliance with those limitations as they have effect in relation to non-compliance with any condition subject to which permission is granted for any development.

(2) For the purposes of this Section and of the Act of 1947, any provision of a Development Order (whether made before or after the commencement of this Act) whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references to limitations in this Section or in that Act) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that permission on more than that number of days in that period.”

[Section 58 of and Schedule 7](#) to the 1959 Act made amendments to the 1947 Act (described in the side note as “minor and consequential amendments and repeals”). The amendments included the addition of sub-section 6 to Section 18 of the 1947 Act, to which I have referred above, and the addition of “or limitation (s)” after the references to “condition(s)”, where appropriate, in Sections 23 and 24 of the 1947 Act.

The [Town and Country Planning Act 1962](#) consolidated the earlier planning enactments. [Section 45](#) provided, so far as relevant:

“(1) Where it appears to the Local Planning Authority (a) that any development of land has been carried out without the grant of planning permission required in that behalf in accordance with Part III of this Act, or (b) that any conditions or limitations subject to which planning permission was granted have not been complied with, then ... the Local Planning Authority ... may ... serve a notice under this Section (in this Act referred to as an “Enforcement Notice”).”

That provision was in substantially the same form as Section 23(1) of the 1947 Act as amended by [Section 58 of and the Seventh Schedule](#) to the 1959 Act. The relevant part is now found in [Section 171A\(1\)](#) of the 1990 Act, to which I have referred above. [Section 38](#) of the 1959 Act was not re-enacted.

[Section 177\(1\)](#) of the 1990 Act deals with the powers of the Secretary of State on appeal from an Enforcement Notice, which include: “(b) The discharge of any condition or limitation subject to which planning permission was granted”. That provision derived from the more detailed provisions for enforcement introduced in the [Town and Country Planning Act 1968](#) (see 1968 [Section 16\(5\)](#)). [Section 187A](#) of the 1990 Act (introduced by the [Planning and Compensation Act 1991](#)) provides for breach of condition notices. By [Section 187A\(13\)\(a\)](#) condition is defined to include limitation. Provision is made for certificates of lawful use under [Section 191](#)

(as amended pursuant to the 1991 Act), which refers to breach of limitations as well as conditions. In its unamended form, [Section 191](#) provided for established use certificates also by reference to limitations as well as conditions. That provision itself derived from the 1968 Act.

Thus, taken as a whole, the enforcement related provisions, now found in [Part VII](#) of the 1990 Act refer to the breach of both conditions and limitations, but they have only done so since the 1959 Act. Whilst [Section 38](#) of the 1959 Act was not re-enacted, the amendments then made to Sections 18 and 23 of the 1947 Act have been carried through and re-enacted in subsequent legislation.

Submissions

Mr Brown submits that the 1990 Act does not provide for the grant of planning permission subject to limitations otherwise than by a [Development Order](#). He draws attention to [Sections 70\(2\) and 72\(1\)](#), which make express provision for conditions limiting the period of a permission but do not refer to the imposition of limitations. That is consistent, he says, with [Section 57\(2\)](#) of the Act, which only applies to a permission defined in [Section 72\(2\)](#), that is subject to a condition. Those provisions are in contrast to [Section 60](#) of the Act, which expressly provides for planning permission to be granted by a [Development Order](#) subject to conditions or limitations. They are all themselves consistent with [Section 91](#) of the Act, which excludes permission granted by [Development Order](#) (whether or not subject to limitation) and by a “planning permission granted for a limited period”, as defined in [Section 72\(2\)](#). Thus, he submits, there is nothing in [Part III](#) of the 1990 Act to suggest that a limitation can be imposed on the grant of planning permission on an application otherwise than by condition. The definition of breach of planning control in [Section 171A\(1\)](#) of the Act is itself consistent with those provisions. That provision should be considered in the light of its statutory history as set out earlier in this judgment. The reference to limitation, he submits, was clearly intended to ensure that limitations imposed by [Development Order](#) could be the subject of enforcement under the Act. There is no ground for any further inference as to a more general power. He further submits that development for the purposes of the Act, so far as relevant, consists of a change of use, that is the change from one use or non-use to another use. Thus, once the change has taken place, development as defined would not be involved in the continuance of the same use. Accordingly, in the absence of a condition requiring discontinuance of the use, continuation of the use would not constitute development or a breach of planning control for the purposes of the Act.

Mr Rabinder Singh, who appears for the First Respondent, submits that it is plain that the 1995 planning permission was for a limited period. The Inspector could only grant planning permission for what had been applied for, that was in the present case a temporary permission. Thus, he submits, the change of use permitted was to a use for that limited period. Use beyond seven years was not permitted. Limitation should not be given any technical meaning in this context. [Section 45](#) of the 1962 Act was deliberately cast in wider terms in that [Section 38](#) of the 1959 Act was not re-enacted. There is no definition of limitation in the Act and, accordingly, no ground for restricting its meaning so as to exclude a limitation placed on the development permitted, as in the present case. Limitation was well able to be enforced under [Part VII](#) of the 1990 Act, having regard to the definition of breach of development control in [Section 171A](#).

Decision

There are two fundamental questions to be addressed in determining the effect of the permission in the present case, namely:

- (1) Should a power be implied to impose limitations on permission granted otherwise than by a [Development Order](#); and
- (2) What is the effect of a use permitted on an application expressed to be for a limited period.

I will deal with these in turn.

Implied Power?

Planning control, including the grant of planning permission and enforcement, is a creature of statute. The powers of planning authorities and the Secretary of State on appeal are limited to those granted by statute, including those by necessary implication. The 1990 Act does not expressly provide a power for the imposition of limitations on the grant of planning permission pursuant to an application. The argument for necessary implication of that power relies upon the reference to breach of condition or limitation in the context of the enforcement related provisions, supported by the absence of any re-enactment of [Section 38](#) of the 1959 Act. In my judgment, the references in the enforcement related provisions to breach of limitation as well as condition is equally consistent with a reference to limitations expressly authorised as part of the power to grant permission by [Development Order](#). That does not to my mind necessarily imply that the Planning Authority or the Secretary of State has a statutory power to impose limitations on permissions granted on an application that would be amenable to enforcement under the Act. In enacting the 1959 Act, Parliament considered it appropriate to make express provision in [Section 38](#) in respect of limitations imposed pursuant to a [Development Order](#) in addition to making amendments to the relevant sections of the 1947 Act. [Section 38\(1\) and \(2\)](#) of the 1959 Act provided that limitations imposed by a [Development Order](#) and specifically the limitation on the number of days for temporary use could be enforced under the 1947 Act. It is apparent that the amendments in the Seventh Schedule to Sections 18, 23 and 24 of the 1947 Act were intended to carry through that statutory objective. In my judgment, there was nothing in the 1959 Act that justified an implication that the Planning Authority or the Secretary of State had power to impose limitations on the grant of permission pursuant to an application that would be enforceable in a similar manner to limitations imposed under a [Development Order](#). The

amendments were re-enacted in the 1962 Act, albeit without re-enactment of [Section 38](#) of the 1959 Act. The 1962 Act is described as a consolidating Act. The omission of [Section 38](#) of the 1959 Act does not in my judgment provide ground for inferring that the definition of breach of planning control, which was introduced by the 1959 Act by way of amendment to the 1947 Act to include limitations on permission granted by a [Development Order](#), should be construed as conferring a more general power to impose limitations on planning permission granted pursuant to applications under the Act. The framework of what is now the 1990 Act, including the provisions which I have set out above, strongly indicates to the contrary. That would include (1) the provisions expressly dealing with the imposition of conditions ([ss 70\(1\) and 72\(1\)](#)), (2) the absence of any express right to appeal against a limitation imposed pursuant to an application for permission ([s 78\(1\)\(a\)](#)), (3) the provisions for the resumption of normal use ([s 57\(2\)\(3\)](#)) and (4) exceptions to the requirement for commencement conditions ([s 91\(4\)](#)). I accordingly reject Mr Singh's submission that there is an implied power for the Planning Authority or the Secretary of State to impose on a permission granted pursuant to an application limitations capable of enforcement under the Act. In my judgment, the reference to limitations in [Part VII](#) of the Act is a reference to limitations imposed under a [Development Order](#), for which provision is expressly made under the Act.

Use for a Limited Period

Mr Singh's alternative submission is that the use permitted by this permission was not simply use for sales, exhibitions and leisure activities but was use for "sales, exhibitions and leisure activities for a temporary period of seven years". In other words, the use itself should be seen as a use limited for that period. I have doubt whether the character of a use for the purpose of [Section 55\(1\)](#) of the 1990 Act can properly include without more whether the use was temporary or permanent. Change of use is from one use or non-use to another use and should be considered in terms of the character of the use of the land. Materiality for the purposes of [Section 55\(1\)](#) should be judged as a matter of degree on a comparison between the use before and after the change. I do not consider that generally the character of a use would alter whether it was to last for one year or seven years or was permanent. In most cases the use of the land on each basis would be for planning purposes identical. That seems to me consistent with the Divisional Court decision in *Cater v. Essex County Council* (supra), where a similar argument was rejected by Lord Parker CJ at pages 437/438. That conclusion is reinforced in my mind by considering the position as to enforcement at the end of the seven year period. I remain unpersuaded by the submission made by Mr Singh that the continuance of the use beyond seven years would in itself constitute a material change of use. It is at least partly for that reason that the Act provides under [Section 72\(1\)\(b\)](#) for a condition requiring the discontinuance of use at the end of the period.

In the present case, the relevant application was for a temporary period, thus effectively volunteering a condition in accordance with what is now paragraph 110 of the annex to Circular 11/95. The imposition of a temporary condition was plainly open to the 1995 Inspector. His failure to impose such a condition might well have been open to criticism. His decision, however, became immune from challenge after six weeks by virtue of [Section 284](#) of the 1990 Act. That does not provide grounds for implying a condition to that effect in what is a public document, conferring rights in connection with the use of land. In my judgment, accordingly, the permission as granted became effectively a permanent permission.

Thus, on the main issue in this application I accept Mr Brown's submission that the 1995 permission permitted change of use of the appeal buildings to sales, exhibition and leisure activities and did not impose any limit on the period for that use would be subject to enforcement under [Part VII](#) of the 1990 Act. Accordingly, the issue as to the effect of the permission raised in the representations on the subsequent appeal should, if it was material to the Inspector's decision, have been resolved in the Applicant's favour.

Materiality

Mr Singh submits that, properly understood, this Inspector found it unnecessary to decide whether the 1995 permission was temporary or permanent. The Inspector concluded, he submits, that on either basis Government policy in PPG6 as to the sequential approach was paramount and the appeal should be dismissed. In particular he relies upon paragraph 40 of the decision letter, where the Inspector stated:

"I have carefully considered the weight which should be attached to the planning history of this site, particularly in relation to the planning permissions which have been granted. I agree with you that some significant weight should be applied to these considerations, but, even allowing for that, I believe that the importance of implementing contemporary Government policy in relation to development of this type and the sequential approach, notwithstanding the other considerations, to be paramount in this case. For these reasons this appeal must fail."

In that paragraph, Mr Singh submits, the Inspector agreed in terms with the Applicant that “some significant weight” should be attached to the planning permission that had been granted in 1995. However, the Inspector went on to conclude that the sequential policy approach was “notwithstanding the other considerations” paramount. The weight to be attached to those considerations was entirely for the Inspector. He plainly concluded, Mr Singh submits, that, whether the permission was permanent or temporary, the appeal should be dismissed.

That submission by Mr Singh must be seen in the context of the decision letter as a whole. At paragraph 21, as I have set out above, the Inspector stated that “It is not for me to reach a conclusion as a matter of law as to whether or not the (1995) consent is of a temporary or permanent nature.” As Mr Brown submits, the nature of the permission was in issue between the parties. It was plainly of potential relevance to a decision on the appeal and accordingly an issue to be determined by the Inspector in so far as it became material to his decision, even if it was to an extent a matter of law.

In paragraph 23 the Inspector continued:

“I will take full account of the planning history of the appeal site, including the terms of the relevant appeal decisions and the reasons for them. I will not, however, look behind the status of the 1995 decision other than to note the terms of the planning permission granted. The appeal before me is for the permanent use of the site in the manner proposed and I shall consider that development on its merits, having regard to the matters I have identified above.”

The sense of the comment “I will not ... look behind the status of the 1995 decision other than to note the terms of the planning permission granted” is obscure, but it is, in my judgment, at least consistent with a conclusion by the Inspector that he would take account of the 1995 decision “in the terms” in which it was granted, i.e. as a permission for seven years, in contrast to the permanent use sought in the appeal before him. That approach would be in conflict with what I have concluded earlier in this judgment to be the true position in law, namely that the planning permission as granted was not subject to an enforceable limitation restricting it to seven years but was in effect permanent.

At paragraph 36 the Inspector continued:

“I am very conscious of the fact that planning permission has been granted on the appeal site for the development you wish to implement. I have already stated that I do not regard it as part of my function now to express an opinion as to the validity of that consent in terms of its temporary/permanent nature and that matter is not before me.”

That passage again seems to me to demonstrate that this Inspector had concluded that it was no part of his statutory function to resolve the issue as to the status of the permission before him. I have already indicated earlier in this judgment that the status of the permission was potentially relevant and thus, potentially, a matter for the Inspector to resolve.

He continued in the same paragraph:

“Whatever the terms of that permission, it was granted before the publication of PPG6 (revised) and the development proposed was not assessed in relation to the sequential approach.”

The earlier grant of planning permission may be material to a subsequent decision having regard to the desirability of consistency in decisions made in respect of the same development and on similar facts (*North Wiltshire District Council v. The Secretary of State for the Environment* (1993) 65 PCR 137). That is a different consideration from what is known as the fall-back position, i.e. the use to which land may be put even if permission is refused on the instant application (*Spackman v. The Secretary of State for the Environment* (1977) 1 All ER 257 ; *Brentwood Borough Council v. The Secretary of State for the Environment* (1996) 72 PCR 561). In my judgment, on a fair reading of this part of the decision letter, the Inspector was there considering the earlier appeal decision on the former basis, that is having regard to the desirability that his decision was consistent with the earlier decisions. He does not appear, at least in this paragraph, to have considered the fall-back position or its implication if the 1995 permission was in effect permanent. That is consistent with paragraph 38 of the decision letter, where the Inspector stated:

“Despite what you say on this issue I consider that the publication of PPG6 (revised) is a material consideration in this appeal which distinguishes it (in policy terms) from those decided previously in 1994 and 1995.”

In paragraph 39 the Inspector concluded that the proposed development would be in breach of the sequential approach in PPG 6 and that the appeal must fail unless other material considerations outweighed that finding.

The Inspector then went on in paragraph 40 (set out above) to agree that “some significant weight” should be attached to the planning permissions that had been granted, but to conclude that the importance of implementing the sequential approach was paramount. In the context of the decision letter as a whole, it is at that point far from clear on what basis the Inspector was approaching the earlier planning permissions and in particular the 1995 permission. As I have said, he declined to determine the status of the 1995 permission. If it was in effect a permanent permission, the appeal would only have been seeking what would have amounted to a change in the description of the relevant development. That would have been potentially of considerable materiality to the decision and one would expect it to have been specifically addressed in the decision letter. There was, however, no reference to that consideration as part of the Inspector's conclusions. Given the absence of specific mention of that key factor together with the other passages in the decision letter to which I have referred, I am unpersuaded that the Inspector took into account that the effect of the 1995 permission was or even may have been permanent or that he concluded that the sequential approach in PPG 6 should prevail, even if the existing permission was in effect permanent. It seems to me that this Inspector failed to have regard to the position that I have held to be correct as a matter of law, that is that the 1995 permission was in effect a permanent permission for the use of the land for the purposes that were the subject of the subsequent appeal.

Paragraph 43 of the decision of the letter is consistent, in my judgment, with that conclusion, where the Inspector states “I have fully considered all the other matters raised. In particular, I have taken into account the conclusions and decisions of the Inspectors in relation to the previous appeals and, in so far as I have concluded differently to them on the merits of this case, this is due to the substantially revised policy background against which I am considering this matter.” I conclude, accordingly, that the Inspector failed to have regard to a material consideration, namely that the 1995 permission was in effect permanent, and in so doing erred in law.

Discretion

In my judgment, on the findings I have made, there is no ground for exercising my discretion to refuse the relief claimed.

This application accordingly succeeds and the decision will be quashed.

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Appendix 3: Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited [2012] EWCA Civ 1473

Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited



Positive/Neutral Judicial Consideration

Court

Queen's Bench Division (Administrative Court)

Judgment Date

1 February 2012

CO/7181/2010

High Court of Justice Queen's Bench Division the Administrative Court

[2012] EWHC 277 (Admin), 2012 WL 280432

Before: Mr Justice Ouseley

Wednesday, 1 February 2012

Representation

Mr Matthew Reed (instructed by Solicitor to Hertfordshire County Council) appeared on behalf of the Appellant.

Mr Daniel Kolinsky (instructed by Treasury Solicitors) appeared on behalf of the First Respondent.

Mr Anthony Dinkin QC and Ms Clare Parry (instructed by Mullis and Peake) appeared on behalf of the Second Respondent.

Judgment

Mr Justice Ouseley:

1. Hertfordshire County Council challenges the decision of the Secretary of State for Communities and Local Government given by an Inspector on 7 June 2010, dismissing appeals made by Metal and Waste Recycling Limited against two enforcement notices served by the County Council in respect of an alleged material change of use and operational development made without planning permission on a scrapyard in Wallace Way in Hitchin.

2. Metal and Waste Recycling Limited has operated a scrapyard at the site since the 1970s with the benefit of a planning permission which was not subject to any conditions relevant to the issues here. It replaced an old fragmentiser used for dealing with scrap metal with a new one in 2006, and around that time its throughput increased notably. Lorries arrived at unsocial hours. Dust was created.

3. The County Council served Enforcement Notice A alleging a material change of use without planning permission caused by an increase in throughput and its effect. It was arguing that the material change of use had been caused by an intensification in the use. It required the use to return to operations as they had been conducted before 2006, with various controls imposed, rather resembling conditions, through the medium of steps required to be undertaken to remedy that breach of planning control.

4. Enforcement Notice B alleged that a number of buildings, including the replacement fragmentiser, had been erected without the planning permission they required and should be removed.

5. After an 8-day inquiry and considering the evidence, the Inspector rejected the County Council's argument on the material change of use essentially because most of the significant effects of which residents and local businesses complained were not caused by the increase in throughput. She rejected the County Council's arguments on operational development because the buildings were permitted development, not requiring specific planning permission, and she also concluded, in the light of her decision on Enforcement Notice A, that the scrapyards use was not unlawful.

6. Hertfordshire County Council, with permission, challenges those decisions. Mr Matthew Reed, appearing for the County Council, contends that the Inspector wrongly excluded from her judgment as to whether a material change of use had taken place by way of intensification those effects attributable to changes related to the scrapyards use other than the increase in throughput. The argument on behalf of the second respondent, Metal and Waste Recycling Limited, has involved some consideration of the concept of material change of use by intensification.

7. The County Council contended that the buildings were not permitted development because the scrapyards use should be regarded as falling outside the scope of an industrial process within the meaning of the Town and Country Planning (General Permitted Development) Order 1990, S1 No 418, and the scrapyards use was not lawful.

8. The terms of Enforcement Notice A are important. The breach of planning control as amended alleged:

“... without planning permission the material change of the use of the Land from a scrap-metal yard with an average yearly material throughput of 121,174 tonnes, to a scrap yard, (including as part of this use an end of life vehicle recycling facility), with an average yearly material throughput of 231,716 tonnes, the totality of the new use having a different nature and character from the former use.”

9. The reasons for the issue of the Enforcement Notice refer to the impact which that breach of planning control has had: new buildings were built, including the new fragmentiser “to service this substantial increase in throughput”. The steps which Enforcement Notice A required Metal and Waste Recycling Limited to take to remedy the breach of planning control read like the imposition of a series of conditions. These were intended to limit the monthly throughput, the days and hours of operation, and the number and hours of heavy goods vehicle use. They required the buildings which were said to be required to service the increased throughput to be demolished. Those buildings were also the subject of Enforcement Notice B.

10. Mr Reed, for the County Council, agreed that paragraph 10 of the Inspector's decision letter accurately summarised his submissions. In view of the arguments, I set them out:

“10. The increase in throughput at the time of the installation of the fragmentiser has been used by the Council to describe the extent of the material change of use. However, it accepts that the significant increase in throughput, itself does not amount to a material change of use. The Council

has had regard to the planning consequences of that increased throughput in reaching its conclusion that there has been a material change of use. The essence of the council's case on this ground is that there has been an intensification of use which has had significant effects on the locality. It contends that the proper question to consider is not whether the description of the use remains the same but whether the character of the use falling under that description remains the same. The Council relies upon case law to support its contention that in deciding whether the current use is materially different from the previous use, it is appropriate to have regard to the impacts of the current use in comparison to the former use. The Council's position is that there can be a material change of use by reference only to changes in impacts."

11. Metal and Waste Recycling's submissions in contrast were:

"11. The appellant strongly rejects the Council's submission that there can be a material change of use by reference only to changes in impacts. He accepts that a comparative exercise is necessary based on the effects of the increase in throughput, but submits that the fact that there are more HGVs, general activity, explosions, noise or dust is not sufficient to constitute a material change of use. The question to be asked is whether the effects of that increase in throughput, including effects off-site, are such that there has been a definable change in the character of the use of the land. If off-site effects are being relied upon they must be such as to have caused some fundamental change in the character of the use of the land. Mere intensification, even with adverse side effects, is not enough."

12. Fundamental to the County Council's case is the contention that although the significant increase in throughput was by itself insufficient to constitute a material change of use, the planning consequences of that increase demonstrated a material change of use. Metal and Waste Recycling contended that the adverse impacts from the increase in throughput were not sufficient to demonstrate a material change of use by intensification. A definable change in the character of the use of the land was required.

13. The Inspector's decision letter then considers in sequence the particular impacts relied on by the County Council. In paragraph 68 and following, she set out accurately the effect of a number of authorities cited to her on the scope of intensification. She said:

"In the light of judicial pronouncements, and after considering the approaches of the parties, it seems to me that what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use. It is necessary to first look at the effects of what has been done at the site."

14. She then drew together her unchallenged conclusions of fact and degree, and her conclusions as to the cause of the impacts relied on, in paragraphs 69 to 71. So far as dust was concerned, she said:

“There is no evidence to indicate that any dust created by the site would cause a risk to human health. I have concluded there has been a material increase in dust experienced by local businesses which has emanated from the site since the increase in throughput occurred. However, there is no substantial evidence that the increase in dust identified by local residents at their homes derives specifically from the appeal site or can be directly attributable to the increase in throughput.”

15. She then turned to the explosions caused by the quantity of gas bottles in the waste handled at the site. She said:

“The evidence also does not support the conclusion that the increase in throughput has materially changed the level of impact resulting from explosions at the site.”

16. There had been a significant increase in the number and size of heavy goods vehicles going to the site. She said about that:

“Nevertheless, the size of vehicles and the use of containers to transport material from the site can be attributed to changes in export markets and practices of the haulage industry, rather than the increase in throughput.”

17. The impact, however, of that increase in the number and size of HGVs was more complex. She had previously found that there had also been an increase in HGV movements generally on the road which led to the industrial estate and to the scrapyard. She continued:

“There is additional road traffic noise but the main disturbance caused to residents is by HGV vehicles going to and from the site during the ‘*night time*’ period. The available evidence indicates that this relates to drivers’ working practices and the need to comply with regulations and is not directly caused by the increase in throughput. There has not been any material change in the impact of noise disturbance caused by HGVs that can be attributed to the intensified scrap yard use. The increase in HGVs going to and from the site as a result of the increase in throughput has not given rise to any material harm to the safety of people using the public highway.”

18. , In paragraph 70 she turned to on-site noise:

“As regards the noise emanating from the site, it must be recognised that prior to the carrying out of the noise attenuation measures, the new fragmentiser was initially identified as the source of the elevated noise levels giving rise to complaints. However, the situation is obviously very different with the acoustic shield and the other noise attenuation measures in place. There have been no significant alterations in the noise characteristics of the other on-site activities. The evidence does not reveal any significant adverse planning consequences arising from the noise generated by the on-site operations following the increase in throughput. Taking all the various effects as a whole, they cannot be said, as a matter of fact and degree, to have produced a materially different situation in planning terms than previously existed.”

19. Her overall conclusions are in paragraph 71:

“I concur with the appellant's general proposition that the primary way a planning authority should control the extent of any use is through the imposition of conditions. This site is a long established scrap metal yard which has been operating under an effectively unrestricted planning permission since the 1970s with no conditions attached to control matters such as the number of lorry movements or hours of operation. The effects of the intensification need to be such as to have caused a material change in the character of the use. There have been changes in the effects of the operation upon the surrounding area and, in some instances, the very substantial increase in throughput has been a contributory factor. However, many of the identified impacts upon local residents and businesses derive from extraneous factors and not the increase in throughput. I conclude that the increase in throughput has not had such materially different planning consequences as to take it, as a matter of fact and degree, beyond the normal fluctuations in activity that could reasonably be expected to be experienced by the business. It has not resulted in a change in planning effects of such magnitude so as to cause a material change in the definable character of the use of the land. I find, on the balance of probabilities, that the material change of use alleged by the corrected notice has not taken place. The appeal succeeds on ground (c).”

20. Mr Reed's challenge to her conclusions in relation to intensification proceeds on a narrow front. He contends that in her judgment as to whether a material change of use by reason of intensification had occurred, the Inspector had focused exclusively on impacts caused by the increase in throughput, with the result that she had ignored impacts caused by changes, whether on or off-site, which were caused other than by that increase in throughput: for example, by changes in the number of gas bottles in the arisings, or changes in the drivers' working hours.

21. The Inspector's detailed conclusions show that there were serious noise problems created initially by the installation of the new fragmentiser, largely resolved by later attenuating measures. This was then, in her view, not materially different from what previously had existed (see paragraph 23). She was unable to conclude that the increase in throughput had caused a change in the impact of explosions; yet, as paragraph 29 shows, she thought it likely that there was some increase, not attributable to the increase in throughput. This aspect of the impact was, said Mr Reed, ignored in her assessment of whether there was a material change of use by intensification.

22. In relation to lorry noise off-site, she appears in paragraphs 39 and 40 to conclude that the increase in heavy goods vehicles entering the site is directly related to the increase in throughput, but that the disturbing impact of their noise was attributable to their arrival at the site at unsociably early hours. At paragraph 45 of the decision letter she attributes this impact not to an increase in throughput, but to changes in drivers' working practices, which would have occurred whether the throughput had increased or not; (these are not drivers employed by Metal and Waste Recycling Limited).

23. Accordingly, submitted Mr Reed, that aspect of the impact of change was ignored because it was not attributable to the increase in throughput. The same applies to her conclusion about the increase in the annoying use of beepers. This increase was caused by the turning movements of container lorries, which was not so much a function of the increase in throughput, but of changes in the way in which waste was handled off-site. That impact was accordingly put to one side.

24. The increase in dust, so far as it affected the nearby industrial estate, was caused by the increased throughput. But so far as residents were concerned, she could not conclude that the dust they experienced derived from the site at all or from an increase in throughput.

25. So, reading paragraph 71 of the decision letter with that background, Mr Reed is plainly right to submit that the focus of the Inspector's conclusions on whether a material change of use by intensification had occurred, at least so far as impacts were relevant, focused on the impacts caused by the increased throughput and excluded impacts caused by other changes. Those which were excluded from account in particular included part of the impacts of gas bottle explosions, at least part of which were attributable to the increase in the numbers of such bottles in the arisings anyway, lorry noise in the early hours, which were attributable to the change in drivers' working practices, and the noise of the reversing beepers.

26. The crucial question, however, is whether that approach was an error of law, as Mr Reed submits. He contends that the materiality of a change of use by intensification can, though it may not have to be, judged solely by the change in impacts on or off-site which a use may have, even where the use remains one of the same generic type — here a scrapyards use. The character of the use can be judged and determined by those effects. It is not necessary for them to be attributable to a specific on-site change such as here: the significant increase in throughput which occurred in 2006, at the same time approximately as the new fragmentiser was installed. Hence the Inspector was wrong to exclude those effects which she did exclude from her judgment of whether there had been a material change of use by intensification.

27. Mr Reed submitted that Enforcement Notice A had conveyed the approach he contended for through its use of the words "the totality of the new use having a different nature and character from the former use". He did however accept that that was not how the case was being put to the Inspector.

28. I reject Mr Reed's contentions. I take the last point first because it is significant for both of his arguments in relation to Enforcement Notice A. The material task of the Inspector on this aspect of the Enforcement Notice appeal was to decide whether the matters alleged in the Enforcement Notice constituted a breach of planning control. The allegation in the Enforcement Notice, after argument before me by Mr Reed, may not be as clear as it was to the parties and the Inspector at the inquiry.

29. The former use was the scrapyards use with a particular throughput. The new use was the scrapyards use with the higher throughput. That increase was the material change of use. The significance of the reference to "totality" as encompassing changes unrelated to an increase in throughput, which occurred off-site or which would have occurred on-site anyway to the

same or at least to some degree, was simply not raised before the Inspector. Those changes were not understood by the parties to be relevant of themselves to the material change of use by intensification.

30. It is perfectly clear from the second page of the Enforcement Notice, which refers to the planning reasons behind its issue, that the case was concerned with the effect of the increase in throughput. The issues as recorded and debated before the Inspector, and as judged by her, were whether the effects on or off-site relied on by Hertfordshire County Council were caused by the increase in throughput. That is clear from the record of the County Council's argument in the third sentence of paragraph 10 of the decision letter above, which Mr Reed accepted faithfully recorded his submissions. He took me to his closing submissions in support of his argument, but it is perfectly clear, as he accepted, that they are structured in the same way in order to focus on the effects caused by the increase in throughput.

31. Metal and Waste Recycling Limited focused its own submissions to the inquiry within that same framework, a framework selected by the way in which the County Council sought to present its case on the application to the facts of what it saw as the meaning of its Enforcement Notice. Not surprisingly, that is the framework which the Inspector adopted for her consideration of Hertfordshire County Council's argument that there had been a material change of use by intensification.

32. Hertfordshire County Council lost before her because it lost many of the significant arguments of fact and degree as to whether the effects relied on were wholly or significantly attributable to the increase in throughput. It is perfectly clear that it had thought that the installation of the fragmentiser was the cause of the increase in throughput, and that the amenity impacts which occurred on and off-site were the consequence of that increase in throughput. But it failed on that ground because the evidence of Metal and Waste Recycling Ltd on those matters was preferred.

33. The Inspector looked at those impacts which she concluded were attributable to the increase in throughput, but reached her unassailable and well reasoned conclusion on that point adverse to the County Council.

34. In my judgment, it is not open to the County Council to criticise the Inspector for adopting the basis for decision-making which it had urged upon her, and for failing to adopt a basis which it did not urge upon her. She cannot be said to have misinterpreted the nature of the allegation in the Enforcement Notice, nor to have omitted from consideration material factors to the issue of whether there had been a material change of use as formulated in the Enforcement Notice or as contended for by Hertfordshire County Council.

35. In any event, I am not persuaded that the factors she excluded were material considerations, however the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. A change in the nature of activities on the site, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use other than by way of intensification. But if such changes themselves do not bring about a material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.

36. Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as is necessary to constitute a material change of use, the level at which that activity did or could occur without giving rise to a change of use has to be ascertained. It is only what happens above that no doubt not very clearly defined baseline which can contribute

to the material change of use. In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.

37. I do not doubt that a combination of intensification and other changes in activities can constitute a material change in use; but what could be done without the need for permission would still have to be ascertained. That is how the Inspector approached it. Gas bottle explosions for example would have occurred anyway, as would the use of container lorries and the unsociable hours of the arrival of HGVs outside the site as part of the permitted use. They were not, or largely not, related to the increase in throughput, and so rightly were or largely were excluded from consideration. So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities beyond those which did not require planning permission.

38. Mr Anthony Dinkin QC, for Metal and Waste Recycling Limited, submitted, in support of the Inspector's conclusions, that in effect there had been a degree of intensification falling short of that which could show a material change of use; a material change of use by intensification could not be shown simply by reason of increased impacts, however grave. He pointed out that the County Council had accepted that the degree of increase by itself did not show that there had been a material change of use, and that its argument as to impact on and off-site was the crucial determinant for its argument. The on-site primary or generic use as a scrapyards was unchanged, as the Council had accepted, and there had been no change in the nature or type of activities undertaken on the site. Mr Dinkin rightly points out that the Inspector so concluded at paragraph 67 of the decision.

39. Mr Reed submitted that a material change of use by intensification could be shown by the effect of on or off-site impacts alone. That had happened here, and was why all impacts had to be considered.

40. Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly in paragraph 68 of her decision, as I set out above: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land.

41. I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyards because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land.

42. The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use.

43. I add these words of caution about attempting to broaden material change of use by intensification as a substitute for proper conditions on planning permissions. Although authorities, in the *Court of Appeal for example in Fidler v the First Secretary of State* [2004] EWCA Civ 1295 at paragraph 28, and earlier in, for example, *Lilo Blum v the Secretary of State for the Environment* [1987] JPL2 78 per Simon Brown J, treat the principle of a material change of use by intensification as well

established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.

44. In *Brooks and Burton Limited v the Secretary of State for the Environment* [1977] 1 WLR 1294, Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one.

45. This reflects what Sullivan J said in *R v Thanet District Council v Kent International Airport Plc* [2001] P&CR 2 at paragraph 54:

“It is easy to state the principle that intensification may be of such a degree or on such a scale as to make a material change in the character of a use, it is far more difficult to apply it in practice. There are very few cases of ‘mere intensification’. Usually the increase in activity will have led to some other change: from hobby to business, from part to full-time employment, or an increase in one use at the expense of other uses in a previously mixed use.”

46. The precise description of the existing and changed uses is important. Mere generic descriptions may not always be sufficiently precise to reflect material planning differences. The statutory overlay, for example in relation to generic residential and industrial uses, may now qualify what might have been the role which the concept of intensification may have been thought able to play many years ago. But for all that, the cases have all emphasised the need to identify a material change in the definable character of the use of the land. None of them has suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case.

47. Accordingly, I reject Mr Reed's submission that the Inspector ought to have examined impact alone. She had to examine something else as the starting point for her examination, however much the impacts might have been evidentially relevant.

Enforcement Notice B

48. Mr Reed contended that the fragmentiser constituted operational development for which planning permission was required. The Inspector concluded that it was development permitted under class B(a) in [Part A to Schedule 2 to the GPDO 1995](#). This permits, subject to immaterial exceptions, development consisting of the installation of replacement plant to be carried out on industrial land for the purposes of an industrial process. “Industrial land” means land used for carrying out an industrial process. “Industrial process” is defined in [Article 1\(2\)](#) as a process for or incidental to “(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article”. On the face of it, that is applicable here to the fragmentiser, as the Inspector found, and so the fragmentiser was permitted development.

49. Mr Reed repeats here the argument which failed before the Inspector. He points out that the [Town and Country Planning \(Use Classes\) Order 1987](#), SI No 764, it adopts materially the same definition of “industrial process”. The [Use Classes Order](#)

treats changes of use within the defined use classes as immaterial, including changes within Class B1, light industrial, and within class B2, general industrial. The definition of “industrial process” applies to both of those classes.

50. However, a scrapyards use is explicitly excluded from all schedule classes, including class B1 and class B2 into which it would potentially fall. So a general industrial site cannot become a scrapyards without planning permission. It is illogical then, contends Mr Reed, if a scrapyards is treated as industrial land, or a place where an industrial process is carried on so that it has permitted development rights, but land in a general industrial use cannot change to a scrapyards use without specific planning permission. The same exclusion from the definition of the scope of the [Use Classes Order](#) should apply to permitted development so that scrapyards do not have permitted development rights.

51. I cannot accept that argument. First, Parliament has not put into the 1995 order the exclusion which it put into the 1987 order. That must have been a continuing conscious decision. No basis has been shown for interpreting that later instrument as impliedly incorporating the omitted exclusion — and it must have been deliberately omitted, even if there is no obvious reason for that, according to Mr Reed.

52. Second, there is, in my judgment, a real and obvious difference between treating a change of use from general industrial land to use as a scrapyards as material so that a new scrapyards needs permission, and giving permitted development rights to those scrapyards which already exist. That is what happened here. I accordingly reject Mr Reed's submission on that point, as did the Inspector.

53. It is not necessary to deal with his arguments on whether the scrapyards is a lawful use in the light of the conclusions I have reached in relation to Enforcement Notice A. Accordingly, this appeal is dismissed.

54. MR KOLINSKY: I am very grateful to your Lordship for his judgment. On behalf of the First Secretary of State I would seek an order for costs. The principle and the quantum are agreed, as I understand it. I would invite your Lordship to summarily assess the Secretary of State's costs in the agreed figure of £9,380.

55. MR JUSTICE OUSELEY: Yes.

56. MR DINKIN: May it please your Lordship, I am obliged also for your Lordship's judgment in the matter. My Lord, I do rise to ask your Lordship to consider whether, in the circumstances of this case, there should be some order for the claimant to pay the second respondent's costs. My Lord, I am fully aware of course that normally that is not the rule, two costs orders and so on, and perhaps the circumstances have to be somewhat exceptional to justify it. My Lord, I would respectfully invite your Lordship to consider whether my presence here was justified. Your Lordship has, I think, endorsed much of the submissions that I was making in respect of the material change of use issue as a fundamental point, leaving aside the Inspector's decision as such.

57. So, my Lord, in my submission, an important case for the second respondent. My Lord, I respectfully submit my presence was justified on that point if no other, and that there ought to be a contribution. My Lord, may I respectfully suggest one half? A schedule has been prepared, I do not know whether—

58. MR REED: Quantum is not agreed, so if Mr Dinkin asks for half his costs, I would want to see what that amount is.

59. MR JUSTICE OUSELEY: Half of something that is not agreed.

60. MR DINKIN: There is a schedule prepared.

61. MR JUSTICE OUSELEY: Let us deal with the principle first. I am always interested to see these schedules.

62. MR DINKIN: My Lord, this includes both the permission stage and the current stage, and the grand total is at the end, bottom line, and it is a contribution towards that that I respectfully invite your Lordship to consider in favour of the second respondents.

63. MR JUSTICE OUSELEY: Mr Dinkin, I am not going to make an order for costs in your favour. It is not sufficient, in order to persuade the court to exercise a jurisdiction which it exercises unusually and rarely, to persuade the court that you had a legitimate interest in attending and a perfectly proper role to play in the argument. Respondents in your position usually do have a separate interest from the Secretary of State, and usually bring, if I can put it crudely, something to the party, but that is not an adequate basis for requiring a second set of costs to be paid. I do not think this case brings it sufficiently into an exceptional category to warrant an order for costs in your favour.

64. MR REED: My Lord, I am obliged. My Lord, there is one further order that I would ask the court to make and it concerns the circumstances of an application for permission to appeal. Of course, this is a second appeal, and so if I am to make an application I have to do so before the Court of Appeal. My Lord, there is an issue of course as regards to timing of the transcript. My Lord, I would ask either that we have sufficient time from receipt of the transcript to lodge the application for permission, or if your Lordship is not with us on that—

65. MR JUSTICE OUSELEY: No, I am prepared to give you that. You will have two weeks after receipt of the approved transcript.

66. MR REED: My Lord, I am grateful. Does your Lordship want me to draft that order for the court and have that agreed with the other parties?

67. MR JUSTICE OUSELEY: No, it is a simple order.

68. MR REED: My Lord, that is the only further application that I have.

**Appendix 4: Reed v The Secretary Of State For Communities And Local
Government & Another SOS [2014] EWCA Civ 241**

C1/2013/0777

Neutral Citation Number: [2014] EWCA Civ 241

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 18 February 2014

B e f o r e:

LORD JUSTICE SULLIVAN

LORD JUSTICE KITCHIN

LORD JUSTICE BEATSON

Between:

REED_

Appellant

v

**THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT & ANOTHER_**

Respondent

DAR Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
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(Official Shorthand Writers to the Court)

Mr M Rudd (instructed by DPA Bar Council) appeared on behalf of the **Appellant**

Mr P Greatorex (instructed by The Treasury Solicitor) appeared on behalf of the

Respondent

J U D G M E N T

1. LORD JUSTICE SULLIVAN: This is an appeal against the order dated 1 March 2013 of Mr Robert Jay QC, as he then was, sitting as a deputy High Court judge, dismissing the appellant's appeal under section 289 of the Town and Country Planning Act 1990 ("the Act") against a decision of an inspector appointed by the first respondent dismissing the appellant's appeal against an enforcement notice issued by the second respondent.
2. The inspector's decision letter is dated 24 May 2012. The inspector was considering, at a six day inquiry, appeals against four enforcement notices, which he lettered A to D. In this appeal, we are concerned only with enforcement notice A, which I will call "the notice".
3. As issued by the second respondent, the breach of planning control alleged in the notice was:

"Without planning permission, change of use of the land from agricultural to use for the stationing of two number static mobile homes, touring caravans for residential use, one number storage container, and one number mobile utility block."

The notice stated that this breach of planning control fell within paragraph (a) of section 191A(1) of the Act. Section 171A provides that:

"1) For the purposes of this Act a) carrying out the development without the required planning permission; or b) failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control."

Section 173 deals with the contents and effect of enforcement notices. Subsection 1 provides:

"An enforcement notice shall state a) the matters which appear to the local planning authority to constitute the breach of planning control and b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls."

4. In paragraph 7 of the decision letter, the inspector found that the appellant had been granted a personal planning permission on appeal in 2007 which covered part of the land the subject of the enforcement notice. That permission was for a caravan site for one gypsy family. The permission was subject to a number of conditions, they included a condition that the site should not be occupied by any persons other than gypsies and travellers, as defined; an occupation condition limiting occupation of the site to the appellant and his wife or partner and their resident dependant children; a condition limiting the number of caravans to not more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960; and requiring them to be sited in accordance with the positions marked on the application plan.

5. The local planning authority maintained that the 2007 planning permission had not been lawfully implemented (see paragraph 8 of the decision letter). Presumably, this was why the local planning authority alleged that the breach of planning control was a material change of use from agriculture rather than a breach of condition of the 2007 permission. A curiosity of the case was that, over part of the enforcement notice site, there was an equestrian use which had the benefit of a certificate of lawful use. The inspector concluded that the 2007 planning permission had been implemented (see paragraph 14 of the decision letter) and there has been no challenge to that conclusion.
6. The inspector found that there was a mixed use on the site and one element of the mixed use, namely the use for equestrian purposes, had remained unchanged. The only change was from one static and one touring caravan, to two static mobile homes, touring caravans, and a storage container; the storage container was used as a day room and domestic storage for Mr Hume, who was the occupant of the second mobile home (see paragraph 48 of the decision letter).
7. Once it was concluded that the 2007 permission had been implemented and that there had not been a material change of use of the land from agriculture, careful consideration should have been given as to whether what had occurred was a breach of condition as opposed to a material change of use. The inspector recorded in paragraph 15 of the decision letter the submission made on behalf of the appellant, that the second respondent should, in these circumstances, have issued a hybrid breach of condition/change of use enforcement notice.
8. Following his conclusion that the 2007 permission had been implemented and the council's acceptance of the fact that there had not been a change of use of the land from agriculture (see paragraphs 14 and 16 of the decision letter), the inspector corrected the allegation of breach of planning control in the notice to the following:

"Without planning permission, change of use of the land from a mixed use for equestrian purposes and the stationing of one number static mobile home for residential use and one number touring caravan to a mixed use for equestrian purposes and the stationing of two number static mobile homes for residential use, touring caravans and one number storage container."

9. When dealing with the ground C appeal, the inspector also recorded in paragraph 31 of the decision letter that:

"The appellant claimed that the stationing of an additional residential caravan on the land does not amount to a material change of use and that, as a consequence, there has been no breach of planning control."

The inspector's answer to that submission was contained in the same paragraph of the decision letter and was as follows:

"However, the additional caravan amounts to a doubling of the number of residential caravans permitted on the land and I am satisfied on a fact and

degree basis that the alleged material change of use has occurred. Therefore, the matters alleged in the corrected notice constitute a breach of planning control and the appeal on ground C fails."

10. On behalf of the appellant, Mr Rudd submitted that, in concluding in paragraph 31 that the doubling of the number of residential caravans had resulted in a material change of use, the inspector had either a) applied the wrong test and assumed that "mere intensification" amounted to a change of use even if it did not change the character of the mixed equestrian/residential caravan site use of the land, or b) if the inspector had considered whether there had been a change not merely in the number of caravans on the land but in the character of the mixed use, then he did not give any, or any adequate reasons for concluding that there had been a change in character.
11. In support of his submission, Mr Rudd referred us to the decisions of Mr Justice Ouseley and of this court in Hertfordshire County Council v the Secretary of State for Communities and Local Government and Another [2012] EWCA Civ 1473. In that case, the throughput of a scrap yard had almost doubled. The local planning authority issued an enforcement notice, and the Secretary of State allowed an appeal against the enforcement notice on the basis that there had been no material change of use. The local planning authority's appeal against that decision was rejected by Mr Justice Ouseley in the High Court, and on further appeal by this court.
12. Having considered a number of authorities, the Court of Appeal confirmed the test adopted by Ouseley J, namely that while intensification is capable of amounting to a material change of use, for it to do so it must have resulted in "a material change in the definable character of the use of the land" (see paragraphs 9 to 11 of the judgment of Pill LJ with which the other members of the court agreed).
13. Mr Rudd submits that, although the inspector found as a matter of fact and degree that the corrected material change of use had occurred, intensification had not formed part of the local planning authority's case at the inquiry and, moreover, it is common ground that the inspector's decision letter does not mention the concept of intensification, much less, Mr Rudd submits, does it contain any acknowledgement that mere intensification by way of increase in numbers is not sufficient for intensification to amount to a material change of use. There is no recognition in the decision letter that there must be a change in the character of the mixed use, and the inspector does not identify any such change. The only basis for the inspector's conclusion that there had been a material change of use as opposed to a breach of condition, which was not alleged, was that "the additional caravan amounts to a doubling of the number of residential caravans".
14. Mr Rudd rhetorically poses the question, what has the introduction of one residential caravan done to change the character of the mixed use? He submits that, on a fair reading of the decision, the inspector's conclusion was based on the erroneous premise that mere intensification could amount to a material change of use. If the court did not accept that submission then he further submitted that the inspector had not given any reason for concluding, if he did so conclude, that the character of the mixed equestrian and residential caravan site use had changed.

15. The judge dealt with this ground of challenge in paragraphs 80 to 92 of his judgment, which is reported at [2013] EWHC 787 (Admin). In paragraphs 87 to 90 the judge said this:

"87) Put in these terms, the appellant's submission on ground 2 does have a technical and somewhat unattractive quality. The appellant does not and cannot submit that erecting two caravans rather than one could not constitute a material change of use as a matter of law.

88) The inspector did not have regard to the size or location of the caravan for this purpose (that would have been impermissible) he merely had regard to number.

89) I accept Mr Greateorex's submission that materiality is a matter of judgment for the inspector. The inspector after all rejected the section 142(2)(a) appeal, from which it may be inferred that the number of caravans was relevant to the issue of whether planning permission ought to have been granted.

90) I do not accept Mr Rudd's submission that he can draw solace from the decision of the Court of Appeal in Hertfordshire County Council v Secretary of State ... the facts there were somewhat different. There was one and the same scrap yard with a significantly increased level of throughput. Here we have two caravans rather than one."

16. On behalf of the Secretary of State, Mr Greateorex submitted that the point now raised before this court on behalf of the appellant was barely an issue before the inspector, let alone a principal or controversial main issue. Therefore, he submitted, the very brief reasoning in paragraph 31 of the decision letter was perfectly adequate. During the latter part of his submissions he was prepared to go so far as to accept that if there had been what he described as a "proper debate" about the issue before the inspector, then he could see the force of the point made by the appellant in this court.

17. I am unable to accept that this issue was not squarely raised before the inspector. We have a copy of the written final submissions made on behalf of the appellant. While it is true that they are very lengthy and largely concentrate, as might be expected, on the ground A appeal on the planning merits, nevertheless the point was put before the inspector in this way:

"The original permission was for a caravan site for one gypsy family. The corrected allegation alleges a change of use from a mixed use for equestrian purposes and the stationing of one static mobile. Taking the description of the extant permission, the described original use in the allegation is not correct. The use described to which the land is now put is accepted as being factually correct, however it is not accepted that the change amounts to a change of use. In effect the allegation alleges a

change of use from a caravan site/equestrian mixed use to a caravan site/equestrian mixed use. The issue is one of intensification and in these circumstances the appellant does not consider that intensification amounts to a change of use."

18. Mr Greatorex pointed out that that submission was made under the heading of "ground B" in respect of the notice, but in the following paragraph it is made plain that these points apply also in the case of the notice to the ground C appeal in respect of that notice.
19. While it is true that the inspector had four enforcement notices to deal with in a relatively lengthy inquiry, where there was no doubt a mass of factual material, it seems to me that once he had himself concluded that the 2007 permission had been implemented and the local planning authority had accepted that there had not been a material change of use from agriculture to a use for stationing caravans, that that inevitably raised the vital question: whether the breach of planning control was a breach of condition or development without permission. It is plain from the inspector's decision at paragraphs 15 and 31 that this very issue was raised on behalf of the appellant and that it was contended that adding an additional residential caravan did not amount to a material change of use. Those submissions are expressly recorded in the decision itself.

The points having been raised, they had to be addressed by the inspector.

20. When he was considering the ground C appeal the inspector had to correctly direct himself as to the test to be applied if he was to conclude that an increase in the number of caravans on the site had been such as to amount to a material change of use. The inspector, as I have mentioned, did not refer to intensification in the decision. That would not necessarily have been fatal if it had been plain from the decision that he had correctly directed himself, but the inspector did not expressly conclude that there had been a change in the character of the mixed use. On the face of the decision, the character of the mixed use remained the same for equestrian purposes and as a caravan site for gypsies.
21. If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.
22. Mr Greatorex submitted that, rather than focussing on the inspector's decision, we in this court should be concerned with the judge's reasoning. If one looks at the judge's reasoning, it seems to me that it very largely endorses that of the inspector's, so that if the latter is defective then so would have been the reasoning of the deputy judge. But looking a little more closely at paragraphs 88 to 90 of the judge's judgment, in

paragraph 88 the judge confirms what Mr Rudd submits, that is to say that the only matter to which the inspector had regard when deciding whether there was or was not a material change of use was the number of caravans. That would suggest that the inspector was adopting the erroneous - mere intensification amounts to a material change of use - approach.

23. If one then turns to paragraph 89 of the judgment, in which Mr Greateorex's submission that materiality was a matter of judgment for the inspector was accepted, there is no dispute with that proposition so far as it goes but in deciding the issue of materiality as a matter of planning judgment, the inspector had to correctly direct himself. The question was not simply whether the number of caravans had increased, it was whether the definable character of the mixed use had materially changed.
24. In paragraph 89 the deputy judge referred to the fact that the inspector had rejected the appeal on ground A, that is to say the appeal on the planning merits. The difficulty with that conclusion, in my judgment, is that if one looks at the way in which the inspector addressed the planning merits and the impact of the caravans on the site, it is plain from paragraph 50 of the decision that he was concerned with the fact that one of the permitted caravans had been replaced by a larger mobile home which had been placed in a more visually prominent position on the site, where it was more clearly visible.
25. The inspector also considered matters which were the subject of the other enforcement notices, that is to say the impact of fencing, hard standing and lamp posts. All of those matters were plainly relevant for the purposes of the ground A appeal but they did not go to the key question on the ground C appeal: had there been a change in the character of the mixed equestrian/caravan site use of the site?
26. Turning to paragraph 90 of the deputy judge's judgment, I would respectfully disagree with his conclusion that the Hertfordshire case could be distinguished on the basis that in that case there was one and the same scrap yard whereas here we have two caravans rather than one. Here, we have two caravans rather than one caravan on the same caravan site. In Hertfordshire one had a scrap yard which had virtually doubled in its output. I therefore do not consider that Hertfordshire can be distinguished on the basis adopted by the deputy High Court judge. Moreover, the underlying principle which emerges from Hertfordshire, namely that mere intensification is not sufficient if it falls short of materially changing the definable character of the use of the land, is a principle which was directly applicable to the circumstances of this case as soon as the inspector had decided to correct the allegation of breach of planning control in the notice in the manner that he did.
27. Mr Greateorex sought to persuade as that, unlike the kind of permission that might have applied in the scrap yard case, where there is a general permission for a type of use, the permission given on appeal in the present case was a very narrow one. He submitted that the permission had to be read as a whole and that included the conditions which meant that the permission was not simply a permission for a caravan site for a gypsy family, but it was a caravan site very tightly hedged about in terms of who could occupy the caravans, the number of caravans, their position on the site and so on and so

forth. It seems to me that that submission confuses matters which might well have been relevant if the alleged breach of planning control had been a breach of condition, with the breach of planning control that was actually alleged in the notice as corrected by the inspector: a material change of use. The inspector was simply concerned with whether there had been a material change in the character of the mixed equestrian and caravan site use.

28. For these reasons, whether one focuses on the judge's reasoning or on the inspector's reasoning in paragraph 31 of the decision, I for my part am left in no doubt that the inspector did apply the wrong test, namely a mere intensification test, and that therefore this appeal should be allowed.
29. LORD JUSTICE KITCHEN: I agree.
30. LORD JUSTICE BEATSON: I also agree.

Appendix 5: Statutory Declaration from Deborah Kempster

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Deborah Kempster of Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD,

solemnly and sincerely make this Statutory Declaration. I declare as follows:

1. I am the owner of Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD. I have owned the site since 1989 and I have lived on the site and operated it with my husband Mark Kempster for some 25½ years. We live in a static caravan towards the front (south-western end) of the site, which was granted planning permission at appeal in 1999.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, during all the time I have owned the site.
3. The field to the rear of the site has always been freely accessible throughout my time of owning and living on site and there have been no physical barriers to access between the residential caravan site and the rear field, which has been used as ancillary space associated with the Bay Farm site, and available to people using the wider Bay Farm site.
4. The field at Bay Farm was previously used for strawberry growing until around 1998 when it contracted a weed which made it impossible to grow strawberries. Over a number of years my husband Mark pulled up the plastic poly hoops that was buried under the soils, as well as the irrigation system that also run under the ground. This took years to do, as it wasn't an easy job. Our eldest daughter Janie would help out and enjoyed going up to the field with

her dad and pulling the plastic to see who could get the biggest piles. She would also bring a friend from school to help out.

5. In 1999 when Janie was nine years old, we bought her a quad bike which she used to ride around the open space in the rear field. Before it was completely flattened, Janie would love, driving the quad bike over the humps and bumps, where once the strawberries lines laid. Images of the quad bike being ridden in the rear field (and stored in the rear field can be seen in the photograph attached at Exhibit 1.
6. Around 2011 we employed a Rubin Mitchell to put post rail fence around the whole perimeter of Bay farm replacing the old, barbed wire fence, as it was dangerous for the children playing.
7. Tony Waite one of our neighbours from Ridge Farm would come with his tractor and grass cutter on the back and cut the field for us. The children and their friends would love taken turns on the tractor. He sadly passed away around six years ago. Since then, Ian Hodges and Dan Jackman (who live within the Bay Farm site) have taken over the role of cutting the grass and keeping the brambles down which grow from the neighbours' fields. The fences and the field are currently kept maintained by Ian, Dan and Simon Venn who also lives within Bay Farm site. They all help together to keep the farm clean and tidy; It's too large an area to do on your own so their help has always been much appreciated.
8. Over the years we have regularly used the rear field for family picnics, play games, football, rounders, barbecues and enjoyed firework nights there, inviting members of the family and friends over. With both of my daughters now having children of their own they have also used the rear field for their children to play in and to hold family gatherings, such as birthday parties. Images from some of the family birthday parties and children playing in the rear field are attached at Exhibit 2.
9. I have always kept dogs and am a licenced dog breeder. I can confirm that have used the rear field on a daily basis for walking and exercising my dogs for the time that I have lived at Bay Farm. When we started to store the caravans, people storing their caravans would also

regularly use the rear field for the dog walking/exercising. They needed to exercise their dogs before taking them on the long journeys and the holidays, and when they got back or even when they just used to come over for weekends to clean out the caravans, they'd bring the dogs with them and take them up the rear field. I would have dog litter boxes around the field so they could deposit the mess and keep the place tidy.

10. Ian Hodges was one of the first people to live here in a touring caravan, arriving around 2007. He had separated from his wife and three young children. In his time at Bay Farm, I allowed him to have his children over whenever he needed. He was only living in a small caravan, so he never really had much room, so he always erected tent in the rear field for his children to stay in, they thought this was fun and enjoyed their time with their dad playing in the rear field, flying kites and having picnics; they would also come over for the firework displays we would have. As they got older, they'd bring their friends over, playing football in the backfield. It was a fun area, and it still is today.
11. As my children are now grown up and have families of their own, I am now a nanny of six grandchildren. My daughter Janie moved into Grange stables in 2009, where she had her own family. Janie brought her children up, as she did as a child, enjoying the fresh air and open space in the rear field and using it for a safe place to play and for parties, picnics etc., and letting them enjoy their freedom. Janie also had her own dog business, and she would regularly use the rear field for exercising her dogs, up until the time she moved away from Bay Farm in 2019. Photograph of dogs being exercised in the rear field are attached at Exhibit 3.
12. Similarly, my daughter Kelly, who continues to live on the Bay Farm site today, now has her own young family who most days use the rear field to play in, kicking footballs about, flying kites and walking and playing with the dogs in the field.
13. As the storage of caravans business grew bigger over the years, I would allow people to go in the rear field to air out their awnings. The number of caravans stored on site varies between the summer and winter months, with more caravans being stored when out of camping season.

14. While caravan storage has increased in the rear field over more recent years, the rear field is still used for recreational purposes, including dog walking/exercising and as a place for children to play in by my family, other people living on the site and people using the Bay Farm site to store their caravans and vehicles.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed [REDACTED]

DECLARED at

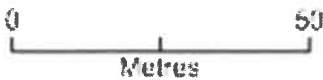
This day of *February* 2024

Before me,

[REDACTED]
A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

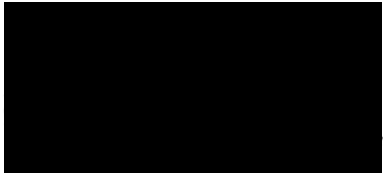


Exhibit 1: Photograph Quad Bike riding in rear field.



Quad bike riding in rear field in 2006



Quad bike in rear field again in 2018

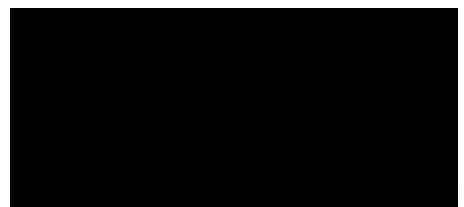


Exhibit 2: Photographs of family birthday parties and children playing in the rear field



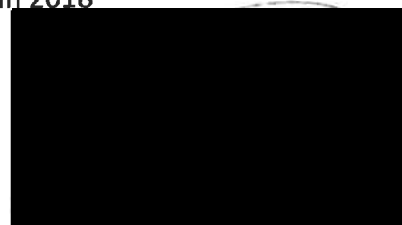
Birthday party in the rear field in 2015



Janie Kempster's son's (Joey) birthday party in the rear field in 2018



Joey and Jesse Kempster picnicing in the rear field in 2018





Joey Kempster playing on trampoline in rear field in 2017



Paddling pool in the rear field in the summer of 2016

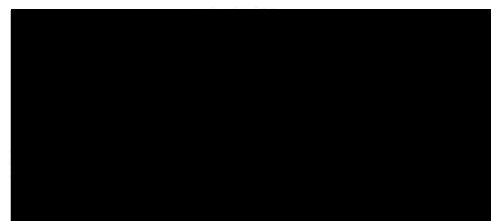
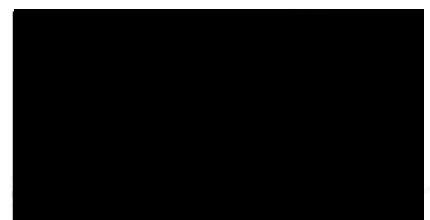


Exhibit 3: Dog exercising in rear field, February 2017



Appendix 6: Statutory Declaration from Mark Kempster

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Mark Kempster of Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD, solemnly
and sincerely make this Statutory Declaration. I declare as follows:

1. I am the husband of Deborah Kempster the owner of Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD, and father to Janie and Kelly Kempster. I have lived on the site and operated it with my wife for some 25½ years. We live in in a static caravan towards the front (south-western end) of the site, which was granted planning permission at appeal in 1999.
2. I've known the site since my childhood with my dad leasing adjacent land for some 50 years and have an extensive knowledge of the site.
3. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during all the time I have known the site.
4. Over the years, I've seen many changes at the site. My wife, Deborah, has been the backbone of the family, and she has been responsible for the running Bay farm. I have read my wife's statement and confirm her statement to be an accurate reflection of my own recollection of the use of the site.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed

DECLARED at

This 6 day of February 2024

Before me,

A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO81 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Appendix 7: Statutory Declaration from Kelly Kempster

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Kelly Kempster of Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD, solemnly
and sincerely make this Statutory Declaration. I declare as follows:

1. I am the daughter of Mark and Debbie Kempster and have lived at Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD, since 1998 when I was 7 months old, and remain living on site within a static caravan known as the Lodge to date. I therefore have an extensive knowledge of Bay Farm and how the site has been used during this period.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during all the time I have lived on the site.
3. While the land has changed over the last 26 years the field to the rear of the site has been freely accessible throughout my time of living on site and there were no physical barriers to access between the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.
4. Growing up I can recall regularly playing in the rear field with my sister Janie (Kempster) and cousin, John Blake. It was a great place to play as we were never allowed to play down the front of the site near the track as mum would say it was unsafe due to cars, so was only allowed in the rear field as it was safer. We used to have lots of fun riding our quad bikes

around the field; a picture from 2006 of me and John Blake is attached below (Exhibit 1).

Every year we would have a fireworks display in the rear field, which family and friends would be invited to.

5. I had a great friendship with Ian Hodge's (who lives in a touring caravan at Bay Farm) daughter Megan, as we are of similar age, and couldn't wait for her to come and stay with her dad. Her two brothers would also come to stay but they were older. The rear field was a great open space and safe place for use to play.
6. Growing up I had a Springer Spaniel called Sadie at Bay Farm, until she sadly died in 2015. I would walk and play with Sadie in the rear field, teaching her new tricks and playing fetch; occasionally watching her chasing rabbits that would bolt from the hedges. I currently have a Westy called Mitsy who I regularly exercise in the rear field.
7. Tony Waite who lived at Ridge Farm just down the track from us would come and cut the grass, towing a grass cutter behind his small tractor, keeping the grass cut so that we could play in the field.
8. In the summertime family would come over (nans, aunts, uncles, cousins etc.) and we regularly used the rear field for family gatherings such as picnics and BBQ's and having games of rounders. Nan would also often bring her dog Maggie, a puppy from my dog Sadie, and we would walk and exercise them in the rear field.
9. When my sister, Janie, had her children they also used the field for picnics and playing in and riding their bikes around. I remember my sister holding birthday parties and having a bouncy castle in the rear field.
10. I now have children of my own and most days take them into the rear field to play, kick footballs about, fly kites and walk the dogs.

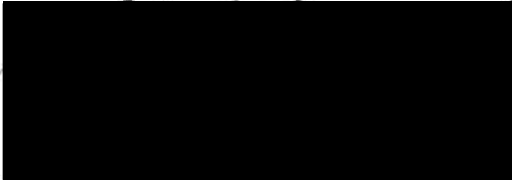
I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed 

DECLARED at

This 6 day of February 2024

Before me,


A Commissioner for Oaths/Solicitor

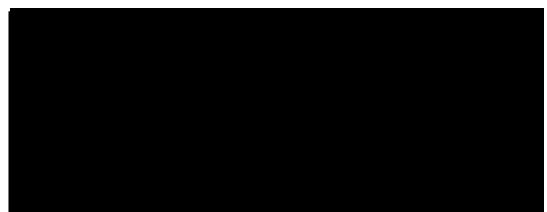
Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Exhibit 1: Photograph Quad Bike riding in rear field 2006



Appendix 8: Statutory Declaration from Janie Kempster

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Janie Kempster of Hilvenor, Victoria Road, Netley, SO31 5DR solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I previously lived with my parents Mark and Debbie Kempster and sister at Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD, who have lived on the site for some 25½ years. In 2009, when my eldest son was born, I moved into my own static caravan at the Bay Farm site, known as Grange Stables. At that time the static caravan was my sole and main residence until leaving in 2019. I therefore have a good knowledge of Bay Farm and how the site has been used during this period.
2. The land outlined in red on the attached plan (Ref. Bay Farm Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time that I lived on the site.
3. The field to the rear of the site was freely accessible throughout my 21 years of living on site and there were no physical barriers to access between the residential caravan site and the rear field which has always been used as ancillary space associated with the Bay Farm site.
4. Growing up we always regularly used the rear field to play in. I had a pony for my birthday when I was 10-11 years old and would regularly ride it around the rear field. I would also ride my quad bike with my cousins in the field, as we weren't allowed out in the track as it was

too dangerous as mum would say. I can remember that when playing in the field, it having lots of humps and bumps from previously being used to grow strawberries and we would try and level it off and pull the black plastic out of the ground to make it more usable.

5. Growing up we regularly used the rear field for family gatherings parties, picnics, fireworks displays and BBQ's. Similar to my childhood, my children also used the field to play in, hold their parties, walk ponies and ride on their quad bikes. I have held birthday parties for my kids having a bouncy castle and other kids' entertainment in the rear field. Photographs from birthday parties we held in the rear field in 2015 and 2018 are attached at Exhibit 1.
6. I have a dog business (Deluxe Pupz) which started in 2008 and continues to date. While living at the Bay Farm site I would use the field on regular basis to exercise my dogs twice a day.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed ...

DECLARED at

This 6 day of February, 2024

Before me

A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TORQM23293171651801
Scale: 1:1250 @ A4

Exhibit 1: Photograph of birthday parties in rear field in 2015 and 2018.

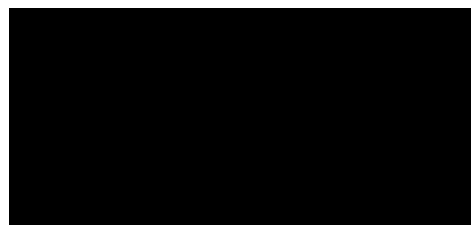


Exhibit 2: Photograph of Sammy Kempster with his uncle in the rear field in 2013



[Handwritten signature]

Appendix 9: Statutory Declaration from Daniel Jackman

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Daniel Jackman of Bay Farm Grange Road, Bursledon solemnly and sincerely make this Statutory Declaration. I declare as follows:

1. I have been a resident of Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD for some 13 ½ years, living within a touring caravan at the Bay Farm site. This caravan has been my sole and main residence throughout the period that I have been at the site. I therefore have extensive knowledge of Bay Farm and how the site has been used during this period.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, since I have lived on the site.
3. The field to the rear of the site has been freely accessible throughout my 13 ½ years living on site and there were no physical barriers to access between the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.
4. During my 13 ½ years on site I have been actively involved in various roles associated with the upkeep of the rear field, including maintaining the boundary fencing and controlling growth of brambles from the neighbouring site, which causes a problem every year. I continue to maintain the site as and when necessary.

5. A gentleman called Tony Waite of Ridge Farm, to the west of Bay Farm, used to regularly cut the grass within the rear field with his grass cutter being pulled behind his small tractor.
6. Based on my knowledge gained from being resident of the site I can confirm that the field to the rear of the site was used by residents of the Bay Farm site throughout the year for the following for ancillary residential purposes including as an area of play for the kids living on site, parties, BBQs, dog walking and exercising and annual fireworks displays.
7. Since 2019 the rear field has also been used at times by people storing vehicles and caravans associated with the wider authorised Bay Farm mixed use site. Often caravans, motorhomes and boats will be removed from the Bay Farm site during the summer months and returned at the end of the camping season.
8. I can confirm that this field was used solely for purposes ancillary to the Bay Farm mixed use site throughout the time I lived on site and for no other purposes.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed


DECLARED at

This 6 day of February 2024

Before me,


A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Appendix 10: Statutory Declaration from Ian Hodges

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Ian Andrew Hodges of Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD,

solemnly and sincerely make this Statutory Declaration. I declare as follows:

1. I have lived in a caravan at Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD for some 16½ years and remain living on site to date.
2. To the best of my knowledge the land outlined in red on the attached plan (Ref. Bay Farm Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I have known the site.
3. Over the years that I have lived on site I've had many roles at Bay farm. I help out with the maintenance, keeping it tidy picking up litter and clearing away, cutting down the brambles that grow from the next-door neighbours and keeping the grass cut down after Tony White who used to do this passed away. There's always something to do when I've spare time helps me pay my way.
4. Before moving to Bay farm, I was previously married with three small children Ashley, Micheal and daughter Megan until getting divorced in 2003. Mrs Kempster would allow me to have my children over to stay with me which they enjoyed. I've always appreciated Mrs Kempster allowing me and my children to have the freedom of the site and use of the rear field and the memories that we've shared at Bay farm.

5. My Caravan was very small and as my children grew older, we used to camp out in the rear field, in a tent. I would do barbecues and entertain my children, the best way I could, I never have much money, but you didn't need much money to enjoy the freedom. They always enjoyed coming over at the Weekends and in the summer-holidays, playing with other kids in the rear field, going on the quad bikes and bringing their other friends over. While my children are now grown-up and have families of their own, they still come and bring over my grandchildren to stay and visit.
6. Every year we would have a firework display in the rear field which would end with a BBQ which was always a brilliant event enjoyed by all.
7. I can also confirm that I've met many friends at Bay farm since I've been here. Including others living on site and meeting people storing their caravans and vehicle at Bay Farm and them walking their dogs in the rear field.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed .. 

DECLARED at

This 6 day of February 2024

Before me, ..


A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
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Scale: 1:1250 @ A4

Appendix 11: Statutory Declaration from June Paul

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, June Paul of 57 Brownlow Avenue, Southampton, SO19 7BX solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I am a mother of three children, John, Stephen and Deborah. My daughter Debbie (Kempster) is the owner of the Bay Farm site. In 1998 my daughter and her family moved on to Bay Farm, and my husband and I would regularly visit them. In 2001 I was sadly widowed, and I spent most of my days with Debbie. I have spent a lot of time at Bay Farm since 1998 and have a good knowledge of the Bay Farm site and its use.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I have known the site. The rear field has always been freely accessible throughout the time I have known the site.
3. During our visits to Bay Farm my husband and I have spent many hours enjoying the open space flying kites in the rear field with our eldest granddaughter Janie (Kempster) and watching her going around and around on her quad bike. My son John and his eldest son would also enjoy this with us, mainly on Sundays as we were always invited to Sunday roasts.

4. Over the years as Kelly (Kempster), my granddaughter, got older I would enjoy walking the dogs with her in the rear field and would often bring my own dog Maggy.
5. Over the years I can confirm seeing other people's children playing and people walking and exercising their dogs in the rear field. There have been many BBQs in the rear field and Debbie would also every year have a wonderful firework display inviting family and friends.
6. Janie, when she had her boys, my grandchildren, carried on using the rear field for the same family events she used to enjoy as a child, for her children, including hosting birthday parties.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed



DECLARED at

This 6 day of February 2024

Before me



A Commissioner for Oaths/Solicitor

~~Michael Devall~~
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 A4

Appendix 12: Statutory Declaration from Sharon Martin

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Sharon Martin of 66 Denzil Avenue, Netley, SO31 5BA solemnly and sincerely make this Statutory Declaration. I declare as follows:

1. I am the grandparent of Janie Kempster's children (3 boys and 1 girl) and being her mother-in-law have known Janie and her family for many years. In 2009 my eldest grandchild was born, Sammy (Junior). They lived at Bay Farm in a static caravan (Grange Stables) behind Janie's parents' home.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I have known the site. The rear field has always been freely accessible throughout the time I have known the site.
3. I visited regularly and baby sat for Janie while she exercised her dogs in the rear field. I had a great view from Janie's home of the rear field and recall regularly seeing others walking their dogs across the field and also seeing people on racing bikes in the field.
4. I had the pleasure of regularly being invited to and attending fireworks displays and BBQs in the rear field. Janie would have the boy's birthday parties in the rear field and they would love running around and playing in the field. I can recall my son Sammy, the boys' dad,

spending hours pushing them around the rear field on their toy tractors, (pictured at Exhibit 1) it was back-breaking work and I'm glad I didn't volunteer. It wasn't unusual to see something happening in the rear field when I visited, including grass being cut, fences being painted, kids on trampolines, quad bikes being ridden and tents on the field.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed

[Redacted Signature]

DECLARED at

This 6 day of February 2024

Before me,

[Redacted Signature]

A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001

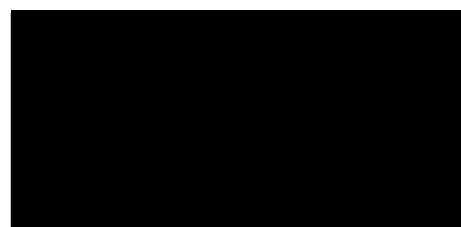


0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Exhibit 1: Photograph of Janie's son Sammy (Jnr) playing in rear field with his dad Sammy Martin in 2016



Appendix 13: Statutory Declaration from Fern Harris

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

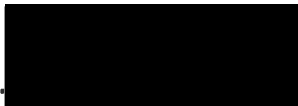
Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Fern Harris of Safe Haven Bay Farm Grange Road, Bursledon solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I have been a resident of Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD for some 8 $\frac{3}{4}$ years since March 2015 and remain on site, living within a static caravan known as Safe Haven at the Bay Farm site with my two youngest children and dog. This caravan has been my sole and main residence throughout the period that I have been at the site. I therefore have extensive knowledge of Bay Farm and how the site has been used during this period.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001), 'the rear field', has been used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, since I have lived on the site.
3. The field to the rear of the site was freely accessible throughout my 8 $\frac{3}{4}$ years living on site and there were no physical barriers to access between the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.
4. During my 8 $\frac{3}{4}$ years on site I had my own business working long hours, so I would walk my dog every day in the rear field both in the morning and every evening, regularly meeting other dog walkers along the way.

5. I have found living at the Bay Farm site a very social place as they arrange firework displays and BBQs in the summer which I have always been invited to and thoroughly enjoy.
6. Based on my knowledge gained from being resident of the site I can confirm that the field to the rear of the site was used by other residents of the Bay Farm site throughout the year for the following for ancillary residential purposes including as an area of play for the children living on site, parties, BBQs, dog walking and exercising and annual fireworks displays.
7. Since 2019 the rear field has also been used at times by people storing vehicles and caravans associated with the wider authorised Bay Farm mixed use site.
8. I can confirm that this field has been used solely for purposes ancillary to the Bay Farm mixed use site throughout the time I lived on site and for no other purposes.

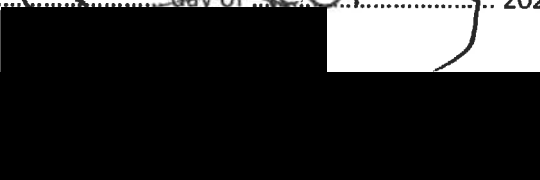
I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed 

DECLARED at

This  day of February 2024

Before me,


A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7QH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Appendix 14: Statutory Declaration from Carter Harris

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

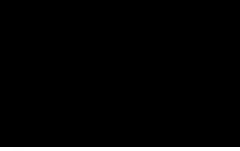
Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Carter Harris of 19 Shelley Road, Thornhill Park, Southampton solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I previously lived with my mother, Fern Harris, sister and our dog at Safe Haven, Bay Farm, Grange Road, Bursledon, Southampton, Hants, SO31 8GD from March 2015 until 2020. At that time the static caravan was my sole and main residence. I therefore have a good knowledge of Bay Farm site and how the site has been used during this period.
2. The land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I lived on the site.
3. The field to the rear of the site was freely accessible throughout my time living on site and there were no physical barriers to access between the residential caravan site and the rear field which has been used as ancillary space associated with the Bay Farm site.
4. During my time on site, I had a very keen interest in motorbikes, an interest which has increased over the years, as my dad built them for a living. I now build motorbikes for myself. While living at the Bay Farm site I would regularly ride my motorbikes in the rear field as part of my hobby.

5. While I lived on site, I always enjoyed attending fireworks displays and BBQs in the summer, that were held by the Kempsters in the rear field, which I was invited to.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed 

DECLARED at

This  day of  2024

Before me, 

A Commissioner for Oaths/Solicitor

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TORQM23293171651801
Scale: 1:1250 @ A4

Appendix 15: Statutory Declaration from Sarah Gomie

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Sharon Gomie of 2 Purbrook Cottage, Hamble, SO31 4SF solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I can confirm that I have been storing my caravan at Bay Farm, from 2009 to date, and have been very happy with the service.
2. To the best of my knowledge the land outlined in red on the attached plan (Ref. Bay Farm Site Location Plan 001 - 1:1250), 'the rear field', has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I have known the site.
3. Over the years I can confirm when we are at our caravan, either taking it away or cleaning and airing it ready for holidays, we have witnessed activities taking place in the rear field just passed where our caravan is stored. These activities have included children playing and whizzing around the field on their bikes.
4. The caravan next to mine is owned by a gentleman called Tom; we would see him on many occasions and have a catch-up. He would always have his dog with him in the early years and would walk it in the rear field before they set off on their holidays.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed ... 

DECLARED at

This 6 day of February 2024

Before me, 

A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO8 1 7QH

Bay Farm - Site Location Plan 001



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Appendix 16: Statutory Declaration from Tom Pengelly

Statutory Declaration

**In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)**

for

**confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)**

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Tom Pengelly of 22 Windmill Lane, Bursledon, SO31 8BE, solemnly and sincerely make this

Statutory Declaration. I declare as follows:

1. I can confirm that I have been storing my caravan at the Bay Farm site, from 2009 to date.
2. To the best of my knowledge the land outlined in red on the attached plan (Ref. Bay Farm Site Location Plan 001 - 1:1250), the rear field, has been an integral part of the wider Bay Farm site and used continuously for purposes ancillary to the wider Bay Farm site, a mixed-use site comprising of residential caravan site, caravan storage and vehicle storage, during the time I have known the site.
3. Over the years I can confirm that I would enjoy walking my dog in the rear field with other dog owners who were using the facilities over the past 10 years plus.
4. My caravan is stored on an area made up of hardstanding. Most years before I took my caravan out in the holiday season, I would set my awning out and air my caravan in the rear field as it was a grass area and easier for me to peg out the large awning which was on the side of my caravan.
5. I can confirm that over the years I have witnessed the grass in the rear field being cut by a man on a tractor with grass cutter behind.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835

Signed

DECLARED at

This 6th day of FEBRUARY 2024

Before me,

A Commissioner for Oaths/Solicitor

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001



0 50
Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Appendix: 17: Statutory Declaration from Carna Emmerson

Statutory Declaration

In support of application for Certificate of Lawfulness of Existing Use or Development under
Section 191 of the Town and Country Planning Act 1990 (as amended)

for

confirmation of the use of the land edged red on the attached plan as forming an ancillary part of
the adjacent mixed used site (residential caravan site and caravan and vehicle storage)

at

Bay Farm Grange Road, Bursledon, Southampton, Hants, SO31 8GD

I, Carna Emmerson of 20 Victoria Road Woolston SO19 9DX, solemnly and sincerely make this
Statutory Declaration. I declare as follows:

1. I can confirm that in June 2015 I was hired by Janie Kempster to attend her son's birthday party in the rear field at Bay Farm, as identified as the land outlined in red on the attached plan (Ref. Bay Farn Site Location Plan 001 - 1:1250).
2. I had my own business at that time known as Marvellous Mascots where I used to dress up as children's favourite TV and cartoon characters. I can confirm that I was dressed as the Minion the character in the photograph taken at the birthday party in the rear field at Bay Farm in 2015, attached at Exhibit 1.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed

[Redacted Signature]

DECLARED at

This 6 day of February 2024

Before me

[Redacted Signature]

Michael Devall
Placidi & Co
27 Middle Road
Park Gate
Southampton
SO31 7GH

Bay Farm - Site Location Plan 001

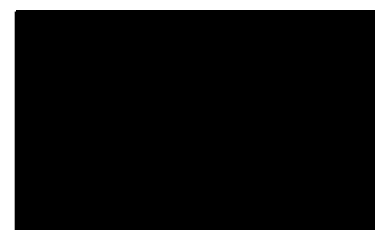


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Metres



Plan Produced for: Laister Planning Ltd
Date Produced: 20 Oct 2023
Plan Reference Number: TQRQM23293171651801
Scale: 1:1250 @ A4

Exhibit 1: Minion character photograph from birthday party in rear field at Bay Farm in 2015



Appendix 18: Historic Aerial Photography



Application Site: Image dated 02/04/2012
Image source: Google Maps (N.T.S.)

The application site is retained as amenity land, clearly forming part of the wider site. Some evidence of scarring of the grassland suggesting an active use of the site.



Application Site: Image dated 03/06/2013
Image source: Getmapping (N.T.S.)

No significant change in the context or appearance of the site since 2012





Application Site: Image dated 22/09/2014
Image source: Google Maps (N.T.S.)

Scarring of the of the surface of the site evident with vehicle tracks up the western boundary and through the centre of the site and two patches of bare ground. No significant natural growth evident within the site, with grass and scrub being cut back regularly.



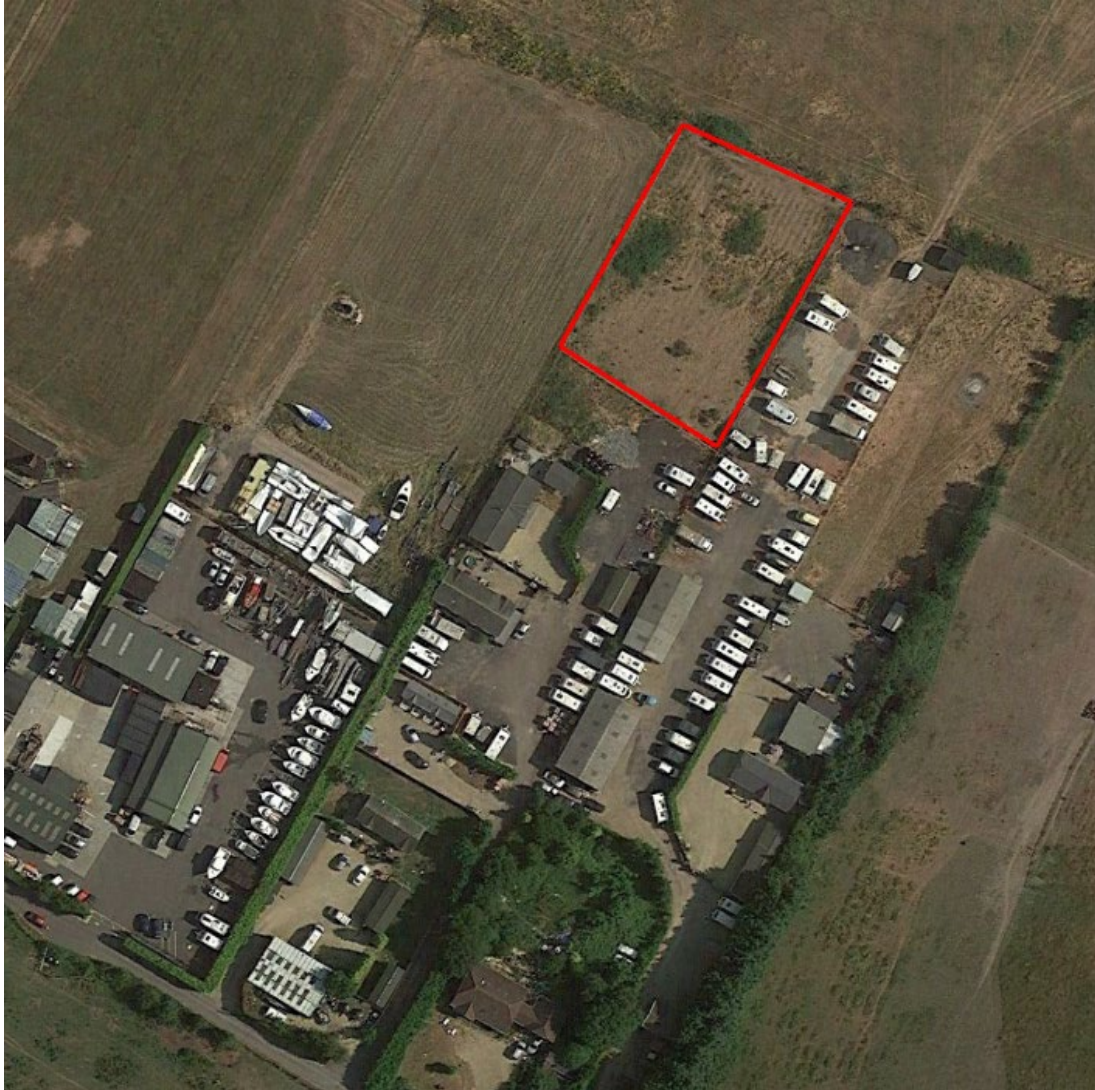
Application Site: Image dated 22/04/2015
Image source: Google Maps (N.T.S.)

No significant change in the context or appearance of the site from previous year.



Application Site: Image dated 26/05/2017
Image source: Google Maps (N.T.S.)

No significant change in the context or appearance of the site from previous year. As with previous years land has appearance of being maintained with no significant growth of grass and scrub.



Application Site: Image dated 06/07/2018
Image source: Google Maps (N.T.S.)

Post and rail fencing introduced to the southwestern boundary of the application site.





Application Site: Image dated 15/09/2019
Image source: Google Maps (N.T.S.)

Expansion of hardstanding from main Bay Farm site on to amenity land area. Introduction of caravan and vehicle storage into the site. This is a primary use encroaching into the ancillary use area, which cannot by definition change the use of the land.



Application Site: Image dated 06/05/2020
Image source: Google Maps (N.T.S.)

Further expansion of vehicle and caravan storage in the north eastern corner of the site evident from previous years, with the mix of uses remaining the same.





Application Site: Image dated 18/07/2021
Image source: Google Maps (N.T.S.)

Hardstanding introduced to much of the site. Increased number of vehicles and caravans sited along the northern and north-western boundaries of the site.





Application Site: Image dated 14/01/2022
Image source: Google Maps (N.T.S.)

No significant change in the context of the site with use and appearance of the site largely remaining as in the previous year, albeit with a slight intensification of vehicle storage within the site.



Application Site: Image dated 03/05/2023
Image source: Google Maps (N.T.S.)

No significant change in the context of the site with use and appearance of the site largely remaining as in the previous year, albeit with a slightly reduced number of vehicles and caravans evident within the application site.

laister

PARTNERS IN PLANNING

01608 238282

info@laister.co.uk | laister.co.uk

Laister Planning Ltd, Oddfellows Hall, Ground Floor, London Road
Chipping Norton, Oxfordshire OX7 5AR

