

Platt
Borough Green And Platt

TM/24/01452/PA

Location: Land Known as Mumbles Farm, Crouch Lane, Borough Green.

Proposal: Lawful Development Certificate Existing: Section 191, Town and Country Planning Act 1991, for the change of use of land from Agricultural Land to use as a Caravan Site for the siting of a static caravan for human habitation and land used in conjunction with that human habitation, as defined in Section 1(4) of the Caravan Sites and Control of Development Act 1960

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1. Description of Proposal:

- 1.1 This application seeks to establish a lawful use on land at Crouch Lane, (also known as Mumbles Farm) Borough Green, Sevenoaks. The applicant asserts that the land has been use for the siting of a static caravan for human habitation, and land used in conjunction with that human habitation, as defined in the Caravan Sites Act 1968 Section 1(4) thus exceeding 10 years and therefore would now be Lawful.
- 1.2 As members will be aware it is possible for the Council to choose to issue a lawful development certificate for a different description from that applied for, as set out in the National Planning Policy Guidance paragraph 009.
- 1.3 As set out below, this above description is not precise enough and not supported by the evidence. A revised description has therefore been substituted as follows:
- 1.4 Lawful Development Certificate Existing: Section 191, Town and Country Planning Act 1991, for the change of use of land from Agricultural Land to use as a Caravan Site for the siting of a static caravan for human habitation and land used in conjunction with that human habitation, as defined in Section 1(4) of the Caravan Sites and Control of Development Act 1960.

2. Reason for reporting to Committee:

- 2.1 This application is referred to Committee by Councillor Mike Taylor on the grounds of:
 1. We do not believe there is proof that the caravan referred to has been on site or in use as a residence for over ten years,
 2. Change of use would harm the openness of the Greenbelt.

3. The Site:

- 3.1 The site concerns a parcel of land located on the north side of Crouch Lane. The site is accessed directly from Crouch Lane. The caravan is located to the southeast of the site.
- 3.2 In purely policy terms the site is located within the Metropolitan Green Belt, Mineral Safeguarding Area, Archaeological Notification Area and Ground Water Vulnerability Zone. The site is not location within Flood Zones 2 or 3.

4. Planning History (relevant):

- 4.1 There is no recent "planning" history on the site or the wider site edged in blue since 1998. Albeit that an identical Lawful Development Certificate (Existing) for the change of use of land for the siting of a static caravan for human habitation and land used in conjunction with that human habitation, creating a caravan site as defined in the Caravan was refused 09 July 2024 under reference TM/24/00721/PA.
- 4.2 Following the decision, it become apparent that the evidence put forward by the Council was not sound, as such the certificate of lawfulness application has been resubmitted for the Council to re consider.
- 4.3 The site has been subject to enforcement investigations, these are set out in more detail within the Council's evidence.

5. Consultees:

- 5.1 *Platt Parish Council:* No comments received at the time of writing the committee report.
- 5.2 *Private Representatives:* This application appears to be a duplication of that made under reference 24/00721. I cannot identify any significant difference, so I wish to repeat the objection that I made to the earlier application for a Certificate of Lawful Development.

I have driven past this site to visit the egg farm on many occasions in the last ten years and I have no indication that anyone was living at Mumbles Farm. I also delivered leaflets to all occupied properties in Crouch Lane in connection with the construction of the new War Memorial Hall and there was nobody living in the caravan at that time.

6. Determining Issues:

- 6.1 It is first important to clarify that whilst the site is located within the Metropolitan Green Belt, consideration on whether the application would be inappropriate development or whether the proposal would harm the openness of the Green Belt is not for consideration in this case.

6.2 This application is a certificate of lawfulness application for an existing use and the only matter for consideration is whether on the balance of probabilities that the use of the land, (which in this case is for the siting of a static caravan for human habitation) has occurred for a period of more than 10 years.

6.3 The evidence submitted with an application for a certificate of lawfulness for an existing development must be sufficiently precise and unambiguous to demonstrate that, as in this case, the change of use of the land and the occupation of the static caravan has occurred more than 10 years prior to the application.

6.4 In this regard Section 191 of the Town and Country Planning Act 1990 (as amended) allows for people to ascertain whether the existing use of buildings or other land is lawful, it states:

“If any person wishes to ascertain whether (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force”.

6.5 If the Local Planning Authority (LPA) are provided with the information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted, they shall issue a certificate to that effect.

6.6 Section 171B of Part VII of the Town and Country Planning Act 1990 (as amended) states that:

“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach”.

6.7 The National Planning Policy Guidance (NPPG) provides advice on how applications for Certificates of Lawful Development are to be considered. It states at paragraph 006:

“The applicant 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...”

“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”.

Applicants evidence

The evidence put forward in support of the application consists of:

- Planning Statement
- Site location Plan – Drawing No. CP/01/24/ Rev A
- Signed declaration from Mr T Williams
- Signed declaration from Mr Benjamin Harvey
- Signed declaration from Mr Patrick Delaney
- Signed declaration from Ms Sarah Randles
- Council Tax notification dated 28 April 2024.
- The application is also accompanied by two appeal decisions:
 - Appeal Ref: APP/L3245/X/19/3222768 - Clematis Cottage, 4 Rudge Heath Road, Rudge Heath, Claverley WV5 7DJ
 - Appeal Ref: APP/B3410/X/19/3239498 - Annexe/Water Lodge, Lodge Hill, Tutbury, Burton-on-Trent, Staffordshire DE13 9HF

6.8 The Planning Statement confirms that *“the application is accompanied by 4 sworn statutory declarations setting out evidence of fact. This evidence, having been sworn before a solicitor is subject to the Statutory Declarations Act 1835, filing a false declaration knowingly and wilfully is a criminal offence under Section 5 of the Perjury Act 1911 and you may be imprisoned for up to 2 years or fined or both”*

6.9 The planning statement also contends that *“The applicants submit precise and unambiguous evidence that clearly demonstrates that the material change of use of the land to a caravan site has occurred as a matter of fact for longer than the required period”*

6.10 The timeline summary within the Planning Statement is set out as follows:

- Change of use of the Caravan from ancillary to agriculture to use for human habitation commences - January 2014
- Time of application submission – Originally May 2024
- Total time used for human habitation prior to Application submission - 10 years 3 months plus.

6.11 In support of the claim the declaration evidence sets out the following:

November 2013

- 6.12 Within Mr Williams declaration (bullet point 6) reference is made to contact with an enforcement officer for the LPA in late 2013 concerning an alleged allegation that the caravan was being lived in. It is also stated, up until this point the caravan had never been lived in and it was only ever used as ancillary to agriculture.
- 6.13 Bullet point 7 (Mr Williams declaration) notes that the case was closed by the LPA 22 November 2013 and a copy of the Council's letter is included at Annexe 4 of Mr Williams declaration.
- 6.14 Reference to an enforcement visit is also set out within the Planning Statement. This notes that *"The LPA conducted a planning enforcement investigation into the caravan and its use which was assigned the reference 13/00082/USEM, this concluded on November 22, 2013 that the caravan at that time was not being used for human habitation and was ancillary to agriculture"*

January 2014

- 6.15 Mr Tony Williams - Declares that the use of the caravan for human habitation and the land outlined blue in conjunction with that Human Habitation, began January 2014 and continued without interruption until he sold on 30 March 2022 when he sold the property to Benjamin Harvey. A total period of use 8 years and 2 months.
- 6.16 In support of the above Ms Sarah Randles - Declares as to the use having commenced in January 2014 as a tenant of Mr Tony Williams and that she remained living at the property without break until 20 March 2022.

March 2022

- 6.17 Mr Benjamin Harvey declaration set out facts in relation to the continued use of the caravan for human habitation, where he declares that he moved into the caravan on the day of purchase, 30 March 2022 and remained living in the caravan until selling the property 23 September 2023. - A total period of use 1 year and 6 months
- 6.18 Mr Havey's declaration notes that at the time of the agreement to purchase the property the static caravan was occupied by a tenant (Ms S Randles).
- 6.19 Mr Harvey's declaration also refers to the enforcement enquiry and confirms that the prior to the caravan being let to Ms Randles it had only ever been used in connection with tending the land and to provide welfare facilities for any person working or visiting the land.

September 2023 - to date

- 6.20 Mr Patrick Delaney - Declares that he moved into the property on 24 September 2023 and remained living for a total period of 6 months, until a new tenant was found on 4 March 2024, the new tenant currently lives at the property.

- 6.21 Mr Delaney's declaration includes photographs of the inside and outside of a caravan. It also includes a copy of a tenancy agreement albeit that the agreement is a little out of focus.
- 6.22 In addition, the Planning Statement references Council Tax, in this regard it states that "*Mr Holloway does not pay separate Council Tax and offers no explanation in relation to his election not to register to pay council tax*". The Planning Statement then goes on to state "*Council Tax or the lack of payment of Council Tax is often mistakenly used by LPA to refuse S191 applications, I submit for the LPA consideration, two Inspectorate decisions where the non-registration of Council tax and how bills are paid or arranged does not fall to confirm that a use has not occurred*".
- 6.23 In regard to the reference to "Mr Holloway", the LPA is presuming that this is a typing error and has within its assessment of the application taken this reference to relate to the current owner of the site Mr Delaney (as set out in the application forms).
- 6.24 Lastly in regard to Council Tax, the application is accompanied by a letter from the Valuation Office Agency (dated 28 April 2024) which sets out that the valuation list has been altered and a new entry has been added as the property comprises a dwelling for Council Tax purposes.
- 6.25 **LPA's evidence**
- 6.26 In addition to the evidence submitted by the applicant it is also necessary to consider the evidence (if any) in possession of the LPA.
- 6.27 It is noted that third-party representation has stated that they have driven past the site on many occasions in the last ten years and there was no indication that anyone was living at Mumbles Farm. In addition, it was also noted that "*I also delivered leaflets to all occupied properties in Crouch Lane in connection with the construction of the new War Memorial Hall and there was nobody living in the caravan at that time*".
- 6.28 The LPA acknowledge these comments but affords them little weight in its assessment of the application as they are not substantiated by any evidence.
- 6.29 The LPA visited the site in 2002, (Enforcement Ref: 02/00261/ANAUTU), 2004 (Enforcement Ref: 04/00263/UNAUTU) and in November 2013 (Enforcement Ref:13//00082/USEM), in connection with the caravan being in residential occupation.
- 6.30 Following the LPA's investigation, which included visiting the site (on all three occasions) the LPA concluded that the caravan was used as shelter in connection with the animals on site. Such a use does not require the benefit of planning permission from the LPA. Therefore, it was concluded in 2013 that no breach of planning control was occurring.

- 6.31 The LPA must afford this significant weight in its assessment of the application.
- 6.32 In 2015 a further allegation was made to the LPA that the caravan on site was being used for residential purposes. (Enforcement Ref: 15/00380/USEM) According to the enforcement file (at paragraph 6.1) it states *“I visited the site and observed a caravan in situ. It did not appear to be inhabited”*.
- 6.33 Concluding at paragraph 7.1 *“The caravan on site has been on site for a long period of time and is not used for residential purposes”*.
- 6.34 Attached to the enforcement file are two photographs which shows a caravan, one from a distance, taken from the road the other slightly closer but also taken from the road.
- 6.35 It has come to light that the photographs attached to the enforcement file do not relate to the application site. Therefore, no weight can be afforded to these photographs.
- 6.36 In addition, the statement within the enforcement file at paragraph 6.1 is ambiguous as it states “I visited the site and observed a caravan in situ. It did not appear to be inhabited”. (my emphasis added). This statement implies that an internal inspection of the caravan was not undertaken.
- 6.37 Given that the Council cannot confirm that the correct site was visited and moreover cannot demonstrate that the caravan was inspected internally, little weight can be afforded to the enforcement investigation in 2015.

Comments on the applicant’s evidence in light of the Councils evidence.

- 6.38 The LPA acknowledges that it does not have any evidence to refute the evidence submitted by Mr Benjamin Harvey and Mr Patrick Delaney and as such on the balance of probabilities it is accepted that the caravan has been used for residential purposes from March 2022 to date.
- 6.39 The LPA acknowledges the two appeal decisions submitted in regard to Council Tax and accepts the Inspectors finding in relation to those appeals. It also acknowledges that the current owner has registered for Council Tax.

Conclusion

- 6.40 The onus rests with an applicant to provide sufficient information to make their case in relation to a CLUED application. However, if the LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse to grant a certificate, provided the appellant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

7. Recommendation: Certificate of Lawfulness is Lawful.

Contact: Susan Field