

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	241896
Site Address:	Pineridge Farm, Nine Mile Ride, Wokingham, RG40 3ND
Expiry Date:	17 September 2024
Site Visit Date:	8 August 2024
Proposal: Application for a certificate of existing lawful development for the mixed use of land for forestry and the stationing of caravans for residential use.	

PLANNING HISTORY

Application No.	Description	Decision & Date
CLE/2003/8658	Application for certificate of lawfulness for existing dwelling.	Withdrawn
F/2007/0353	Retrospective application for the retention of stable block.	Refused 23 April 2007
240284	Application for a certificate of existing lawful development for the mixed use of land for forestry and the stationing of caravans for residential use.	Part approved 10 May 2024

INFORMATION PROVIDED

By the applicant:

- Planning Statement 16/789B Rev B by Green Planning Studio dated July 2024
- Site Location Plan - 16_789A 001 P01
- Affidavit Lee Painter dated 30 January 2024
- Affidavit Felix Cash Senior dated 30 January 2024
- Affidavit Felix Cash Junior dated 30 January 2024
- Affidavit David Wilde dated 30 January 2024
- Affidavit Anne-Marie Cash dated 30 January 2024
- Email from Agent dated 8 March 2024
- Application Form dated 23 July 2024
- Affidavit from Felix Cash Senior Dated 30 September 2024 (Second Affidavit)

By the Council:

- Site Visit
- Planning History
- Enforcement History:
- Council Tax Records
- Licencing Records
- Aerial imagery
- TPO-1817-2021 & TPO-0280-1985 & TPO-1566-2017

By third parties:

- None

APPRAISAL

Background:

This application follows a previous application for the same description of development which was approved in part by the Council (ref: 240284). This Certificate provides additional evidence particularly in relation to the use/development which was not approved in the previous submission.

Certificate determination:

This is an application for a Certificate of Lawful Existing Use to regularise the use of land as a mixed use for forestry and the stationing of caravans for residential purposes.

In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful.

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. In the case of this Certificate, it must be demonstrated that the use has been on-going continuously for at least ten years i.e. 10 years prior to 23 July 2024 (23 July 2014).

In other words, the breach of planning control relied upon must have been continuous throughout that period: *Thurrock BC v Secretary of State for the Environment* [2002] JPL 1278. The same case confirms that “continuity” for these purposes does not necessarily mean that the land must have been used for the activity in question on every single day during the relevant period.

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

Relevant Legislation:

Town and Country Planning Act 1990 (as amended) (TCPA) -

Section 57 requires that planning permission is needed for development of land.

Section 55 provides that development includes any operational development and material change of use of land.

Section 171B sets out the time limits for a breach of planning control.

Section 191 sets out the requirements for a Certificate of lawfulness of existing use or development.

Timescale:

Section 171B(1) states where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten (formerly four) years beginning with the date on which the operations were substantially completed.

Section 171B(2) provides that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten (formerly four) years beginning with the date of the breach.

Section 171B(3) 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 that breach.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful he may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. As Section 191(1)(a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

- (a) no enforcement action may 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.

Caselaw:

The Courts have held in *Gabbitts v Secretary of State for the Environment and Newham LBC* [1985] JPL 630 that the relevant test of the evidence on such matters is "the balance of probability". The Courts have also held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less 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".

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the*

Regions and Vale of White Horse D.C. [1999] JPL 461 is of value.

Panton sets out guidance for a decision maker to follow in considering an application and from that case three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

The Panton case was considered further by the Courts in *Secretary of State for the Environment, Transport and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten year period of unlawful use the LPA, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example, the unauthorised use had temporarily ceased) then any such period could not count towards the ten year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

Appraisal:

The legal test of the evidence is 'on the balance of probabilities' that the use is lawful.

The evidence submitted in support of the application and the evidence held by the Council is set out below.

The Applicant's evidence

The below Affidavits have not been altered since the previous submission.

Affidavit Anne-Marie Cash:

Anne Marie Cash states that she resides at 92 Norrey's Avenue. In 2005 she moved into a caravan in the woods on Pineridge Farm and members of her family live at Pineridge Farm. She moved into one of the caravans in the middle of the trees for about one year.

She states that the location of the caravan is indicated on the Plan 16_789A-002.

Whilst she lived on Pineridge Farm, there were four or five other caravans in the area outlined in red on the plan that had people living in them. They were lived in by other members of the extended family and by people who worked for Felix Cash. She also thinks there were some people who were renters.

[Officer note: This evidence entirely relates to before the 10 year period]

David Wilde Affidavit:

Mr Wilde states that he lives at The Meadowcroft, Barkham but previous lived in a static caravan at Pineridge. He moved into the caravan at the beginning of 2005 and off in November 2016.

He moved into the static caravan in the Woodland Area outlined in Red on plan 16_789A-002.

He thinks there were 4 other residentially occupied caravans at the beginning of 2006 in the woodland area and they increased steadily over the time he lived there.

When he first moved in he was paying rent but did not have a tenancy agreement. He got a tenancy agreement after living in the caravan for a few months. He moved from the woodland area to a bungalow on the Park on 9.11.2006 and back into a caravan in the woodland on 1.5.2007. He occupied a caravan on the site continuously as his main residential address for 9.5 years.

The approximate position of the static caravan is indicated on plan 16_789-002.

He states that by the time he moved away from Pineridge [2016] there were around 6 static caravans lived in by tenants in the woodland area as well as more stationed further into the woodland. He states that the Landlord's son Felix Junior was also living in a mobile home. His mobile home was delivered just before he got married and he moved into it after he got married.

He states that each individual static caravan with a tenant has a pre-payment electricity meter. Water supply is included in the pitch fee and each tenant purchases their own gas bottles for cooking and heating. His static caravan was connected to mains drainage and he believed all the others in the woodland area are as well.

Lee Painter Affidavit:

Mr Lee Painter states that he lives in Langley Common Road and his brother Adam lived in a static caravan in 'the woodland area' shown on plan 16_789A-002. Adam moved in in 2004/2005 and was there until 2014. Adam worked for Mr Cash at Terraforma Paving until November 2014.

The approximate location of the caravan is indicated on the Plan. Mr Painter states that they visited Adam regularly as their hobby was banger racing. There was another lad

he knew who lived in the woodland area called Adam Westell who also worked for Terrafirma paving. He was known to everyone as Little Adam and his brother was Big Adam and they would go to the races together.

Mr Painter states that he met others who were living in the Woodland Area at Pineridge Farm, some of whom were Mr Cash's family and some workers and other people who were paying rent to live in static caravans here.

The caravans were situated amongst the trees and had been there a while as the undergrowth around the caravans was thick and there was tree debris on top of the caravans.

He states that during the time his brother lived in the Woodland Area he lived in two caravans, the first one being replaced with a newer one around 2010.

[Officer Note: Much of the evidence provided in this affidavit is before the requisite 10 year period, apart from Feb to Nov 2014].

Felix Cash Senior Affidavit:

Mr Cash states that he lives at Pineridge Farm which he purchased in February 2004. He provides the Land Registry Title for his Land at FCS1.

Pineridge Farm is in purple on the attached plan 16_789A_002. He states that also within the Land is a residential caravan park most of which has planning permission or lawful use certificates or both.

The residential caravan park changed its name at the beginning of 2022 from Pineridge Park to St. George's Park.

St. George's Park is run by Phoenix Residential Homes Limited. The company was started in August 2007. Debbie Wilkins has been the Manager of the residential caravans with tenants from the start of the company until today. Between December 2020 and July 2023 three other people were the Manager but Debbie Wilkins is the Manager again now.

Within St. George's Park is an area without a planning permission or lawful use Certificate. The area is fenced off from the rest of St. George's Park and has a lot of trees and the caravans are sited in and amongst those trees. The area is referred to as "the woodland area" identified outlined in red on plan 16_789A_002.

The siting of residential caravans/mobile homes within the woodland area began around 2003/2004. Some of the first people to live in the caravans were members of extended family, at times, when they didn't have anywhere else to live and shortly after that people who worked for his company Terrafirma Paving. Around the same time he started having paying tenants living in the caravans in the woodland area.

He states that as the condition of individual caravans in the area deteriorates the caravans have been replaced with newer ones.

Over the years the number of caravans have increased. It started in 2004 with 4 caravans. There were six in 2005, eight in 2009 and by 2016 there were 15 residential caravans with tenants plus a mobile home (Felix Cash Junior).

There are currently 17 caravans in residential use with tenants in the woodland area. In addition to the tenants Felix Cash Junior lives in a single unit mobile home on the site.

Each caravan has a pre-payment electricity meter.

The water supply used by the tenants is included in the pitch fee. Each tenant buys their own gas bottles from Mr Cash for cooking and heating. All caravans in residential use are connected to mains drain.

There were no formal tenancy agreements until 2007. After Phoenix Residential Homes Ltd was formed tenancy agreements were issued. In the first dozen or so years that there were caravans in the woodland area there were always some caravans that were occupied for residential purposes by members of extended family or people who worked for Mr Cash either on the Pineridge Site or Terrafirma Paving. The family and workers did not have tenancy agreements.

When Felix Cash Junior was getting married, a single unit mobile home was purchased from Stately Albion in 2012 so that he and his wife Montana would have a home for themselves. They married on 24.2.2012 and the mobile home had been sited and fully prepared by the date they were married. The mobile home was located in the woodland area. Felix Cash Junior later replaced it with a twin unit and then again with a single unit mobile home. He has had a mobile home in the same location since February 2012 and the currently single unit mobile home is still there.

The occupants of the caravans in the woodland had the use of all the woodland area for their recreation and use in association with their occupancy.

Since 2004 there have always been multiple households living in caravans in the woodland area and there has never been a time when there were not multiple households living in caravans in the Woodland area.

[Officer Note: Significant evidence provided in this affidavit is before the requisite 10 year period. There could be a gap in occupation is indicated after Mr Cash's extended family lived here 'at times'].

Affidavit Felix Cash Junior:

He states that he lives at Pineridge Farm and grew up here. In February 2012 when he was 18 a single unit mobile home was purchased from Stately Albion as a home for him and Montana Ball after they married on 24.2.2012.

The single unit was located in the area outlined in red on plan 16_789A-002 and referred to as 'the woodland area'. He replaced the mobile home with a twin unit in the first half of 2018 and at the beginning of 2023 he states that he changed it to a single unit. The mobile homes which have all be stationed on the same base provided a secure home for him and his children.

The approximate location of where the mobile homes have been stationed is indicated on the plan 16_789A-002.

Mr Cash stats that "the Woodland Area" has been used both as woodland and for the siting of caravans for residential purposes for at least seven or eight years before he moved into the first of his mobile homes.

Some family relations lived in static caravan in the few years and for many years people who have worked for his father have lived in static caravans in the woodland area. Also there have been a number of people who pay rent living in static caravans in the woodland area. The number of these have steadily increased.

Now the woodland area has 17 caravans occupied by tenants and his mobile home. The area around the static caravans in the trees and the grassy area up from his mobile home has always been used by everyone which has lived in the static caravans as their recreation area.

Affidavit Debbie Wilkins

Ms Wilkins states that she lives at 19 St. George's Park and has done so since August 2004. She states that throughout this time Felix Cash has owned the land. She has occupied her mobile home at 19 St. George's Park continuously as a main residential address for over 18 years.

The location of the mobile home in which she has lived since August 2024 is indicated on plan 16_789A-002.

Fencing separates St. George's Park from the area where there are caravans in the trees referred to as the "Woodland Area". The location of her mobile home is indicated on plan 16_789A-002.

When she arrived at St. George's Park it was known as Pineridge Park and the name changed in 2022 and at the time she moved here she could see 4 caravans in the woodland area.

Ms Wilkins states that she was previously the Manager for Phoenix Residential Homes from August 2006 until December 2020. After December 2020 there were three other Managers and then she took on the role again in July 2023.

During the periods she was Manager she has had reason to be on the woodland area which provides a shortcut to the Pineridge Farm and there have been residential caravans on this land for at least this length of time. She states that she also has some knowledge of tenancies and occupants of most caravans in this area through the two periods she has been Manager. She states that there are at least 35 tenancy agreements relating to the residential occupation of caravans in the Woodland Area.

Since she arrived in 2004 there have been several workers living in the woodland. Adam Painter, Adam Westell, Stuart Foster and Lee Charry who all worked for Terraforma Paving. They did not have tenancy agreements. The Maintenance Manager Jason Borg moved into the park in 2010 and socialised with them regularly.

There were also members of the Landlord's family (e.g. Anne Marie Cash) who lived in a caravan until she got married. The members of the family who have lived in the woodland area have not had tenancy agreements.

When she became Manager in August 2006 there were approximately 6 residentially occupied caravans in the woodland area and this has increased over time. She states that Felix Junior moved into a mobile home in the woodland area when he got married and has changed the mobile home twice but has always lived there.

Due to deteriorating condition of the caravans in the woodland, caravans have been replaced with newer ones over the years. There are 18 residential caravans in the woodland area, 17 are occupied by tenants with tenancy agreements and one is occupied by Felix Junior.

[Officer Note: Ms Wilkins states she became Manager for Phoenix Residential Homes before the Company was incorporated in 2007. She states there are 17 caravans; it is

not clear why there are 35 tenancy agreements however there could be more than one tenancy agreement for each caravan].

Second Affidavit, Felix Cash Senior:

Mr Cash states that up until 2016 caravans were used for residential purposes sited further into the woodland than they are now, being in amongst the trees closer to Nine Mile Ride.

By 2017 the caravans which were sited in the woodland were re-sited or replaced with new caravans closer to the position where they are today.

Mr Cash states that this was done for a variety of reasons including, needing enough space for larger new caravans which replaced older ones and reducing the risk of trees falling onto caravans.

He states that when a tree does fall, it is cleared by an employee or resident and the cut wood is scattered around the woodland, used for firewood or for personal hobbies.

Site Plan:

A large red line plan, extract below has been submitted for this Certificate. It differs from those attached to the Affidavit although the red line remains the same in both the site plan and affidavit plan.



The right hand image is a copy of plan 16_789A-002 submitted with the Affidavits, each affidavit refers to certain parts of this plan. The legend has been removed from this extract for data protection purposes. The plan shows 18 rectangles denoting caravans. These are all on the southern part of the site. The area shaded in green adjoining the road is annotated on the legend as “existing trees and hedgerows”. The tree annotations on the plan are also noted on the legend as “existing trees”. This indicates that the areas covered by existing trees and hedgerows are not used for the stationing of caravans for residential purposes.

Planning Statement:

The Planning Statement summarises the evidence with the Affidavits and 3.14 – 3.41 provides additional information on forestry following the previous application ref: 240284 which was considered to have insufficient information to confirm the use, on the balance of probabilities.

They also reference and attach a series of Appeal decisions but do not provide any detailed commentary or relevant paragraph numbers within these decisions in relation to their relevance to this site and the evidence/facts of this case.

The Applicant relies on Carden V Lake District National Park Authority (LDNPA) and Farleyer v Secretary of State for Scotland [1992] 2PLR 123.

Application Form:

The application form states that the use began on 1 January 2024.

Council Evidence:

Enforcement Investigation RFS/2015/065357

A PCN was sent to the Agent dated 13 July 2014. The red line of the PCN covered most of the application site:



The allegation was *“without planning permission, the change of use of the land from woodland to business use with associated creation of hardstanding”*.

Eleanor Kidd at Green Planning Studio, responded by letter dated 13 August 2015. There is a typo in the year on the original PCN as the enforcement investigation is a 2015 investigation and the cover letter is dated 13 July 2015.

The answer to question 4 “who uses the land and what do they use it for?” *“Mr Felix Cash uses the land of the storage of materials and machinery. It is effectively a builders yard...In the last 10 years the land has been used for the storage of materials and machinery”*.

The PCN response also states that this red line attached to the PCN encompasses more than 1 planning unit, including part of a residential curtilage.

A meeting note from a meeting in the Council Offices dated 10 May 2017 states that Mr Cash’s intention to submit a Certificate for the use of woodland for siting of caravans.

A telephone note August 2015 between Enforcement Officer and Matthew Green (Agent) states that Mr Felix Cash used the area as a yard, vehicle and materials.

[Officer Note: Planning Unit differs from Agent’s current position]

An email between Enforcement & ET Planning dated 21 February 2018 states that the LPA are awaiting a Certificate for the ‘front area of Pineridge’.

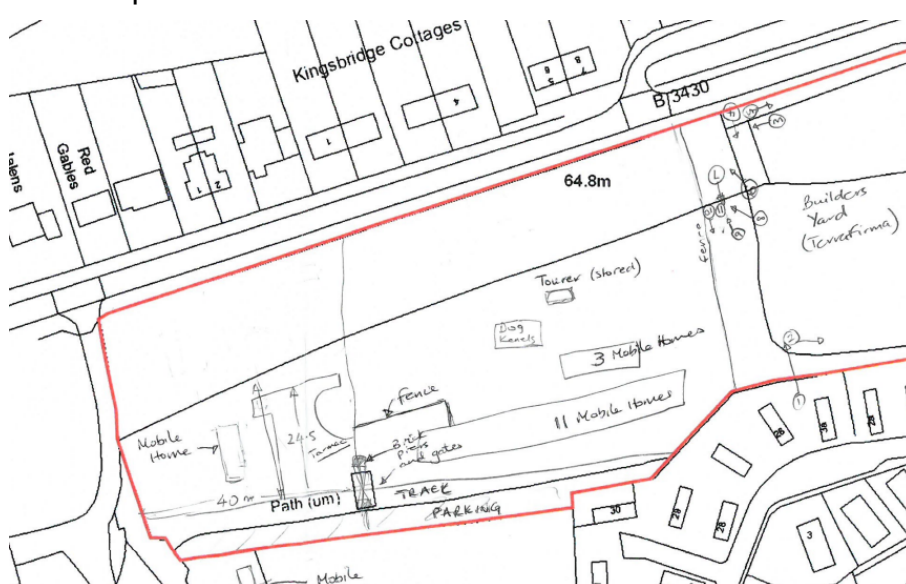
Enforcement Investigation RFS/2015/00238 & RFS/2016/082982

Site visit note 1 July 2016 - it was observed that within the woodland, mainly on the southern edge, that there were 15 mobile homes being lived in as separate units of

accommodation and a touring caravan (being stored). One of the caravans had its own plot on the left before reaching the gates.

Felix Cash, owner (FC) and Matthew Green, Agent (MG) stated that the site had been used for the siting of caravans for residential use for in excess of 10 years. Jason Varley, Council Officer (JV) asked how many had been there since the beginning to which FC answered 4 or 5 and pointed to an area in the southeast of the site. They stated that they were there when the Planning Inspector did their appeal site visit in late 2014 (which JV attended) in respect of an adjacent site. JV did not recall having seen them and only observed a high sided van on that boundary, which may have obscured views into the site.

There was another mobile home in its own curtilage to the left-hand side of the driveway before reaching the main dwelling. This replaced another structure that was there. The site visit plan is below:



Based on the information provided by Mr Cash that the caravans had been there 10 years a Certificate was invited.

Enforcement Investigation RFS/2015/065356

Letter dated 22 December 2015 to Enforcement from Eleanor Overton at Green planning Studio states *"no trees have been removed on the site for a considerable number of years and in any event within the past four years"*.

Enforcement Investigation RFS/2021/086637

On 12 October 2021 the Phoenix Residential Homes Manager emailed the Officer whilst arranging a site visit. This was Ms Sophie Tarr not Debbie Wilkins.

Officer site visit notes dated 2.3.2022 that a Certificate would be submitted for the yellow area marked on a plan (see below). Mr Cash confirmed that caravans to front of this area will be subject of a future Certificate application.



Planning Application 200843

The site visit photos dated 20.5.2020 indicate the presence of a caravan within the woodland, it appears above the fence line and tree cover.

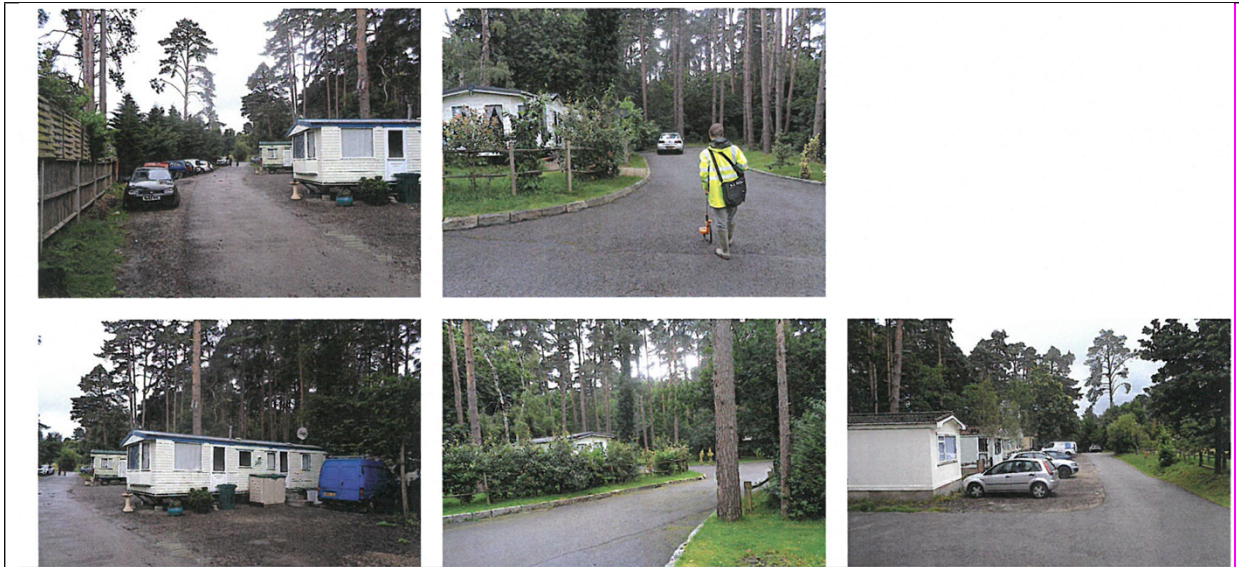


It is likely that if a second caravan was stationed behind this caravan, it would also protrude above the fence line but cannot be seen in this image.

Council Tax (consultation on 240284):

Council Tax had communications with the Enforcement team on 30 March 2017. Enforcement advised that in order to comply with a High Court Injunction Order a number of caravans on a different part of the site were vacated on 12 December 2017. The email stated that following this injunction additional caravans were moved to alternative parts of the wider site which need addressing via Council Tax. This part of the site was highlighted in red in an attached aerial image and in part, included some of the application site.

Council Tax records held photos dated around 20/07/2016. A single row of caravans (approximately 6-7) can be seen in the photographs:



Cars are parked alongside the road, no caravans are stationed in this area.

Certificate Application Site visit (26 February 2024):

Approximately 22 caravans were observed on the site visit within the red line area. 2 caravans at the front of the site (adjacent to the road) were not in residential occupation, they were stored on the site. This was clear because the caravans were not level; this was confirmed by Mr Cash. Caravans did not cover the entire red line area, some areas of the red line had neither caravans nor trees present.





It is noted in the above image, the second row of caravans can be seen above the fence, which was not the case in 2019 (see application visit photos above).



The 2 caravans immediately above were separate from the other caravans and not in residential use at the time of the visit, they were stored.

Certificate Application Site visit (8 August 2024):



The site largely remained unchanged from the previous visit.

Mr Cash advised during the site visit that the land around the caravans and near the road, that at the time of visit had no residential caravans on (apart from one stored), was used as recreational space for the occupiers. He said the children of occupiers used it for play and dogs were exercised there. He showed Officers the drains covers within the centre of the woodland for the mains drainage. A chassis of a mobile home was observed in the undergrowth that had been there for some time, indicating there was previously a caravan in this location (near Nine Mile Ride) though does not indicate any precise timescale. He also showed Officers a shed, container and structures for keeping dogs and storage that were associated with the occupiers of the site, these were all within the woodland area. Mr Cash also advised that in the past trees had fallen and when this happened he employed someone to make safe and cut/remove them.

Environmental Health (consultation from 240284):

There are no records of site licences ever having been held for the area in this application and EH are not aware of any historical relevant planning permission that

would have enabled a site licence to be issued (Relevant planning being planning permission for use of land as a caravan site or a s.191 Certificate). No licence applications have been made for this area either.

Companies House:

The company name is Phoenix Residential Homes Limited which was not the name given in all the affidavits. They were incorporated on 20 August 2007. Ms Wilkins was appointed as Secretary on this date and resigned on 2 September 2021. Mr Felix Cash was appointed as secretary following this resignation. There are 3 fixed charges registered on the company.

Aerial Imagery:

30 April 2022	29 June 2019
	
WBC 2015	WBC 2013
	
In 2013, the site appears part of the site being used as a builders yard, there may be few caravans that can be seen in the aerial image and there are lorries and stored items sited in the woodland. In 2015 some caravans can be seen sited in the south of the woodland and cars parked adjacent/to the south of them. In 2019 caravans can still be seen sited in the south of the woodland. The caravan in a plot to the south of the internal road has moved position. In 2022 caravans can still be seen in the south of the woodland. There are no caravans to the south of the internal road.	



The land in the south west of the red line on the application does not appear to have had caravans in the aerial imagery on at any time, save for the area marked with a blue star below (although in this 2022 snip, there are no caravans in this location). This is the location of the caravan occupied by Felix Cash Junior. The affidavit states that the caravan was replaced and this aerial image could relate to the period in which the caravan was being removed/replaced.

It must be noted that the aerial imagery only relates to a snapshot in time and does not evidence a continuous use. Additionally, the imagery is inconclusive in showing the presence of caravans across the whole site due to tree cover. Furthermore, the imagery does not evidence any use of caravans even where they can be seen on the imagery.

Google Streetview Imagery:

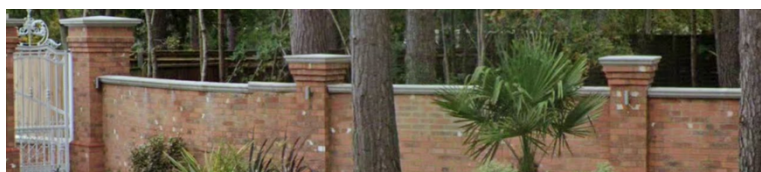


In March 2011, the fence line was in a different (set back) position to the existing road fence. Although the Affidavits indicate that caravans have been on the site since 2004, they are not easily discernible in this image. Nor are there any caravans at the front of the site because it is fenced off from the verge trees.





In June 2010, the fencing has been erected at the front of the site (differing to 2011) but caravans cannot be seen at the front of the site and dense vegetation makes it unclear whether there are caravans at the area. The builders yard can be seen behind the new access.



In October 2020, no caravans can be seen at the front of the site, and the old fenceline, shown in the 2011 image above, appears to still be in situ, indicating that it is unlikely that any caravans are located to the front of the site.



In April 2021, at least 6 caravans can be seen to the rear of the site only.



In May 2023, the view is similar to that in 2021



In September 2023, the view remains similar, with no caravans to the front of the site, there do not appear to be significantly more caravans visible than in 2021.

In conclusion, there appear to be no caravans sited to the front of the site (adjacent to the road) between at least 2011 and 2023. The caravans appear readily visible in these images at the rear of the site the site from 2020 only, though it is accepted that vegetation may obscure some views in some imagery. It is not inconceivable that the front area was being used for recreational purposes by the caravan occupiers mixed with the forestry use.

Evidence from third parties:

No comments received.

Planning Unit?

The Applicant states in this Certificate that the site comprises a single planning unit with a mixed use for forestry and the stationing of caravans for residential use.

Where a LDC is granted for one use on a "planning unit" which is in mixed or composite use, that situation needs to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use if it extends to the whole of the land comprising the planning unit, to the exclusion of the other uses formerly taking place on some of the land (see *Wipperman v Barking LBC* [1965] 17 P&CR 225).

The concept of a material change of use of land is not defined in any statute or statutory instrument; it is a question of fact and degree in each individual case. Relevant to the discussion is the concept of the planning unit. This principle has evolved as a means

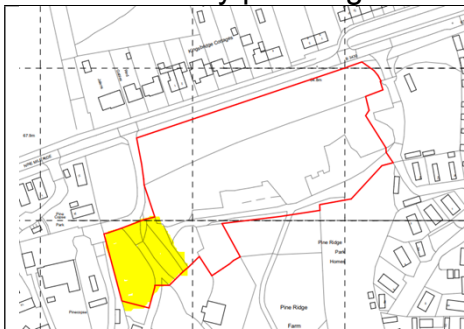
of determining the most appropriate physical area against which to assess the materiality of change in the use of land or buildings. The tests for determining the planning unit are well established and starting with the unit of occupation turn on the concept of physical and functional separation. As a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

However, it is not considered that any active forestry is taking place at the site (see forestry section of this report) and the planning unit for the siting of caravans can only be formed when caravans were introduced onto the Land.

The 2015 PCN response states that the planning unit is smaller than that shown on the PCN, yet the planning unit described within the Planning Statement is larger than this. The Agent has not provided any clarification on this matter. A new planning unit could only be formed after the builders yard use ceased. Even if an accrued planning use right to site residential caravans on the original planning unit had been demonstrated, it would have been lost by the formation of a new planning unit and by way of a material change of use. The fact that caravans might have been present on site since 2004 is no indication of its actual use over the 10 years prior to the submission of a certificate of lawful use application.

The Applicant's Planning Statement references the Burdle tests.

It is clear from the site visit that the land to the west of the red line (highlighted in yellow as shown below) is physically separated by a boundary treatment (predominantly hedgerow) and contains no caravans nor many trees, it has a different character and appearance to the woodland where the main caravans are located. It is predominantly a landscaped driveway with grass verges providing access to Pinecopse Park and the dwellings at Pineridge Farm. It is not considered that this forms part of the caravan/forestry planning unit.



Forestry:

The LPA does not dispute that the term forestry is restricted to growing, managing and processing a utilisable crop of timber; it also includes activities such as woodland management, including the felling, thinning and coppicing of small diameter trees, and the clearance of brash and undergrowth.

However, without a felling licence or a TPO works application the applicant cannot cut down, uproot, top, lop, wilfully damage or destroy any trees in this location. There is no evidence of a felling licence or tree work application(s). The applicant has claimed that they have been managing the woodland for at least 10 years prior to the application,

however the aerial imagery does not show any obvious difference in woodland cover that could be attributable to active forestry.

A letter from Green Planning dated 22 December 2015 states that no trees have been removed from the site in the last 4 years (see above).

There is also no dispute that the site has Scots Pine trees on it or could be considered a woodland or forest. 3.25 of the Planning Statement states *"it seems clear that forestry is the planting, managing and caring of forests or woodland"* however, although there are trees on the land, woodland is not a use of land for which a Certificate can be issued and in order to issue a Certificate for a forestry use, this use must be evidenced.

There are no plans or affidavits suggesting that forest management is likely or has previously taken place and no evidence has been forwarded that suggests that the Applicant has planted trees, managed or cared for the woodland nor evidence to indicate that they have either the skills or employed experts to undertake any relevant tree works such as planting, lopping, managing, or felling. This in combination leads to the conclusion that there is little prospect for "forestry" having taken place taking place on this site. However, during the site visit Mr Cash advised that he managed the woodland by removing trees that fell in stormy weather.

At 3.30 of the Planning Statement, it is stated that any level of management of the woodland would constitute forestry; this is not disputed, however it is a broad statement that does not relate to the site. No evidence has been presented that any level of management of the woodland has taken place in this case. At 3.34 they state that the Applicant has facilitated the trees natural regeneration by maintaining them. No evidence in statutory declarations, or otherwise has been provided to indicate how or when the applicant has maintained the trees.

The Planning Statement states that active forestry does not need to be taking place for a forestry use to be occurring nor does felling have to take place. They maintain that the growing of trees is key to maintaining their resource. Regardless of the definition of forestry, there is no evidence of new tree planting, felling or any other activities taking place on the site that may indicate a forestry use.

From Appendix J of the Planning Statement, it is not clear how this site is similar to the appeal site. The site relates to a 0.76 hectare area of mainly woodland in a National Park. Not comparable to this mixed use on this site nor does it contain any evidence relating to forestry at the application site.

20. Trees take decades to reach maturity so it is not surprising, after the planting and thinning fazes of the plantation, that there was a long period when there was no woodland management activities on the land, which local residents have become used to. The lack of activity for this long period does not indicate that any abandonment of the use of the land occurred, just that the use was in a dormant phase before harvesting of timber could take place. There is no evidence to indicate that there has been any actual or intended abandonment of the forestry use of the land before it was purchased by the Appellant. The application was submitted on 11 August 2017 so it is necessary to consider whether the forestry use of the land was supplanted by another use in the preceding 11 days.

No information has been provided on the planting, and thinning phases of the plantation or any other evidence to indicate that there is a long period where no woodland management activities were required and the reasons for this.

Similarly, Appendix L is not clear how this is comparable to the mixed use site in this application nor does it contain any evidence of forestry here or how this would be similar to the application site.

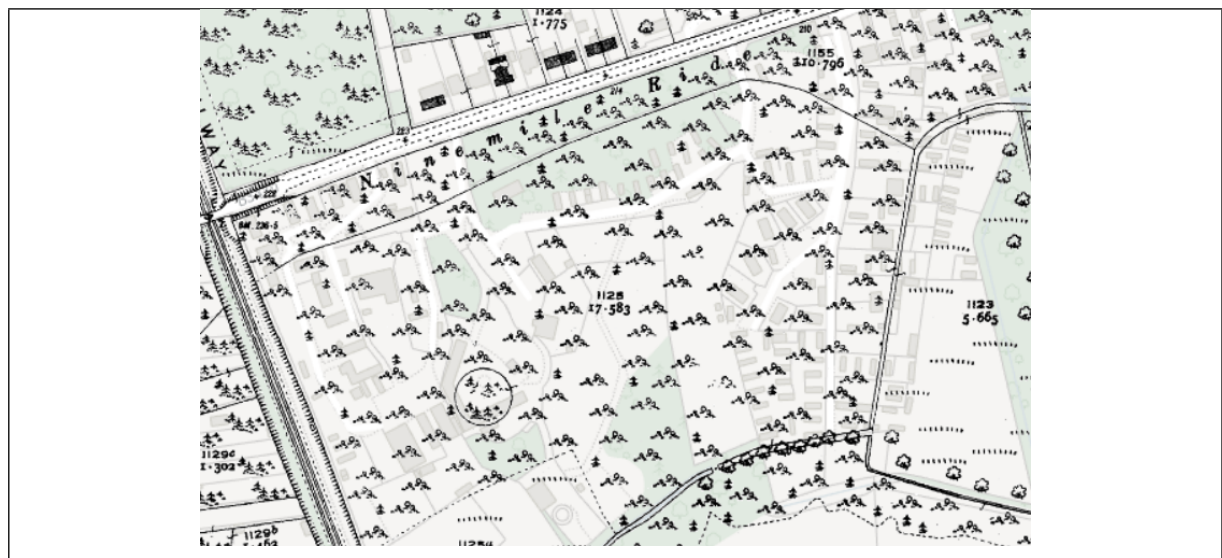
At 3.36 of the Planning Statement the Applicant refers to the Council needing to determine what the use of the land is e.g. a nil use of the site. An alternative use is not relevant to the determination of the Certificate. The application can only be assessed against what is applied for and on the evidence provided.

The Second Affidavit from Felix Cash identifies that trees that fall are removed.

As within the Officer's report for application 240284, the Council maintains their view that the existence of the woodland by itself isn't sufficient to indicate a forestry use. The Applicant has attempted to rebut this position by providing additional evidence.

Notwithstanding the above, it is accepted that there is no statutory definition of forestry in s336 of the TCPA, but it does not need to involve a commercial element, the practice of maintaining woodland could be considered forestry. An ordinary dictionary definition of forestry is the planting and managing of forests. A forest is defined as a large wooded area having a thick growth of trees and plants. However there is little evidence to corroborate the Applicant's alleged forestry use of the land, other than the occasional maintenance of a fallen tree.

The Applicant has provided little or no information on the forestry activities at the site. The Council accept that this woodland was likely planted as part of the historic Forests of Windsor coniferous plantations for forestry purposes. Pines were planted due to their suitability in the locality and their quick growing timber to cover the timber shortages at this time and is in close proximity to Windley Forest S of Nine Mile Ride (see 1933 WBC Historic map). There have been no applications on the site for change of use of the land.



However, the Council has limited evidence to the contrary other than the site photographs (providing a snapshot in time) and aerial imagery. From this evidence, if trees are present on the site and it is not clear if forestry was taking place, on the balance of probabilities it is not therefore possible to dispute that the land has been used for forestry purposes for the last 10 years.

Assessment:

The affidavits are not precise and unambiguous with specific dates or details of occupancy provided between the dates of 2/2/2014 and 2/2/2024 (i.e. 10 years prior to the application). They provide general and some not very specific evidence for what needs to be demonstrated, however some provide confirmation of the applicant's case. Furthermore, it is not clear whether the residential occupation has been continuous, no dates are given and Mr Cash Snr states his family resided in caravans at the site "at times, when they didn't have anywhere else to live" then "Shortly after that people worked for my company".

Mr Painter is not best placed to produce information about the requisite time period (2014-2024) and the evidence relating to his brother's occupation predominantly relates to a period prior to the 10 year requisite period. On this basis, the Council attaches little weight to this statutory declaration.

Ms Cash's evidence does not relate to the requisite time period therefore the Council attaches little weight to this statutory declaration.

Mr Cash Snr first affidavit confirms caravans have been on the site since prior to the qualifying period for this application. His second affidavit confirms that before 2016 there were also caravans nearer Nine Mile Ride. Since this date it does not provide evidence of caravans in this location. It also provides confirmation that fallen trees have been cleared from the site. At the site visit he explained that the occupiers of the caravans used the land as part of the wider caravan site for recreational purposes (e.g. children's play and keeping/exercising dogs).

The Planning Statement is not a sworn statement therefore has moderate weight. Furthermore, it is ambiguous to make reference to '*the caravans*' when the statement acknowledges that there were 'caravans' on the site prior to the lawful period. There is no differentiation between the caravans on site during the 10 year period and those that existed on the site prior to this. It would be helpful to have identified each caravan by number on a plan. Nevertheless, the statement does not appear inconsistent with the affidavits.

Tenancy agreements are repeatedly referenced in the evidence provided which states there were tenancy agreements since 2007 however none have been submitted with the application.

The PCN response (2015) states that part of the land was used as "*a builders yard*". The Agent has previously stated that this was solely in response to the allegation and did not confirm that there were no other uses which were taking place at the same time. This may be the case. However, this could be considered to be reckless and misleading as the purpose of the PCN is clearly for the Council to require information about the operations being carried out on the parcel of land. If there were other uses taking place on the site, these could have been disclosed under the question: "What is the use of the Land?". If it could be proved that this was deliberate it could amount to concealment

as it was not obvious to the Council through their site visits what the actual use was and thus the Council relied on the PCN response.

The Council has conducted a number of enforcement investigations and planning applications over the period from 2014 to the time of this application across the wider Pineridge Caravan Park site. The application site area was not accessed as free access was not given without prior notice.

Given the Council's continued and consistent resistance to caravans in this countryside location more decisive enforcement action could have been taken had there not been the consideration that there was evidence of a continuous residential occupation. It does appear from the evidence submitted and aerial photographs that some level of use of the land for the stationing of caravans for residential use has occurred since around 2004. The numbers of caravans have steadily increased since that time. The land around these caravans appears to have been used as garden space and associated ancillary residential use during the time at which caravans have been sited on the Land. There are no boundary treatments within the site that would restrict the recreational use of the land around the caravans.

A Certificate application has been invited by the LPA since around 2017 when the Applicant advised that caravans had been lived in for at least 10 years. Despite this, the onus is on the Applicant to demonstrate the case on the balance of probabilities. Furthermore, the applicant previously applied for the same development and therefore clearly considers that the lawful use of the Land is a mixed use of land for forestry and the stationing of caravans for residential use, although this Certificate was not granted for the description of development sought. A Certificate was part approved on 10 May 2024 for use of part of the site for the stationing of caravans for residential purposes only therefore there cannot be any dispute regarding the lawfulness of this part of the site for the stationing of residential caravans as this has been previously approved by the Council. However, the mixed use for residential caravans and forestry is considered in this application in the context of the evidence provided. The red line for the previous Certificate is reproduced below:



The Council does not have any firm evidence to refute the claims made in the affidavits and application that is sufficient to weigh against them. Additionally, there is no contradictory evidence from any third parties.

Conclusion:

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

(a) no enforcement action may 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

The local planning authority has limited evidence of its own, or from others, to contradict that of the Applicant or make his version of events less than probable. However, the Applicant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the entire site has been in a continuous mixed use for forestry and the stationing of caravans for residential use for at least 10 years prior to the application.

Having considered the evidence submitted with the application and the Council's evidence outlined above, the Local Planning Authority is satisfied that, on the balance of probabilities, the land outlined in red on the below plan has been used for a mixed use of forestry and the siting of caravans for residential purposes for at least 10 years prior to the application. The access road and verges have been excluded as they are not exclusively used for the caravan and forestry use.

On this basis, a Certificate of lawfulness for "the mixed use of land for forestry and the stationing of caravans for residential use" can be issued for the following area. This excludes the area (mixed use access and verges) that is considered to be outside the planning unit.

**The Public Sector Equality Duty (Equality Act 2010):**

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics

include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application nor that there would be any significant adverse impacts as a result of the development.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that, use of the land as a mixed use of forestry and the siting of caravans for residential use has been occurring for a consecutive period of at-least ten years prior to the making of the application. It is therefore considered that the application for a certificate of existing lawful use should be approved and a draft certificate is set out.

Date:	16 October 2024
Earliest date for decision:	19 August 2024
Recommendation agreed by: (Authorised Officer)	Approval 
Date:	30.10.24