



## **WOKINGHAM BOROUGH COUNCIL**

**Address: BLUEBELL FARM COMMONFIELD LANE BARKHAM RG40 4RP**

### **Expediency Report RFS/2022/087794**

#### **1.0 Background Information**

- This matter has not previously been considered by the Planning Committee.
- The Land is owned by and under the control of Sue Elgar (owner).
- The Land in this case, is confined within the red line as shown in Figure 1. It is located towards the southern part of the wider Bluebell Farm site. There is a fence placed between Caravan 1 and Caravans 2-6. The wider site includes the main dwellinghouse and an ancillary caravan in use by the owner's daughter. Planning permission has been obtained for a replacement dwelling towards the northern part of the site under ref: 223783. It is acknowledged all areas of the site are accessed by one main access road at the front.
- A Certificate of Existing Lawfulness Use was refused on 6 October 2022 under ref: 222373 for the change of use of the land to a caravan site, with the reason pertaining to on the balance of probability it had not been demonstrated that the use of the land as a caravan site had been ongoing for a continuous period of at least ten years.
- On 10 January 2023, a Planning Contravention Notice (PCN) was sent to the owner which alleged the stationing of caravans/mobile homes for human habitation on the Land without planning permission. On 31 January 2023, the response for the Planning Contravention Notice was received from the owner querying the location of the additional caravan.
- On 23 March 2023, an updated Planning Contravention Notice was sent to the owner with additional plans showing the location of the 6no. caravans. On 11 April 2023, the response from the Planning Contravention Notice was received from the owner stating Caravan 1 being in permanent use by a family member (traveller status) and Caravans 2-6 are occupied as short term/holiday lets.
- On 14 May 2024, a site visit undertaken established Caravans 2-6 are no longer occupied however the caravans and associated service connections remain on site.

- On 23 October 2024, a site visit undertaken established Caravans 2-6 and associated service connections remain on site. Caravan 1 remains in use by a family member (traveller status).
- A valid application has been submitted for a certificate of existing lawful development for the siting of 1 no. mobile home used as ancillary residential accommodation within the curtilage of the main dwelling under ref: 242456. This application is currently pending a decision.
- Section 171B(3) states 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. In this case, the breach of planning control relates to material change of use of the Land for the storage of caravans which has been ongoing for a period of less than 10 years.

## **2.0 The Site**

- Bluebell Farm is located within designated Countryside and is accessed from the southern side of Commonfield Lane. The site comprises a dwellinghouse and a lawful ancillary mobile home. The site benefits from an existing Caravanning Park use. This is permitted under Part 5 Caravan Sites and Recreational Campsites of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The site is adjacent to an area of woodland on the eastern boundary known as Longmoor Bog, which is a Site of Special Scientific Interest.
- The site also includes 6 no. caravans, 1 of these caravans is in use by a family member (traveller status) and 5 of the remaining caravans are being stored on the Land. The remaining 5no.caravans are subject of this report and the recommendation to serve an Enforcement Notice.

### The Planning Unit

- In the case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 Bridge J took the opportunity to set out clear criteria for determining the correct planning unit. He identified 3 criteria for determining the correct planning unit, which are set out below:
  - (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation is considered.
  - (b) Even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered.
  - (c) Where there are two or more physically separate and distinct uses, occupied as a single unit, but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

- A further consideration in identifying the correct planning unit arose in a case, which considered a piece of land which had been divided into small plots for occupation by caravan dwellers. In this case it was held in *Rawlings v Secretary of State for the Environment and Tandridge District Council* 1990) 60 P. & C.R. 413, that the selection of the appropriate planning unit was essentially a matter of fact and degree.
- It is considered the Site is a single planning unit. Even though caravans 2-6 are accessed via the main access from the front the wider site – this access is used by all owners/occupiers of the site, even the second dwelling which has its own planning unit. The land where the unauthorised use is taking place was previously a caravanning club site (permitted under Part 5 of the GPDO) and has been separated from the rest of the land for many years. There is a fence which separates the dwelling, known as Bluebell Farm, and Caravan 1 (currently used by a relative of the occupier of the dwelling) from the stored Caravans 2-6. The caravan storage area shown within the red line plan below is a distinctly separate area from the rest of the wider site.

Figure 1- Location plan (Planning Unit edged in red)



### 3.0 Alleged breach of planning control

- S55 of the Town and Country Planning Act 1990 (as amended) defines “development” in two strands - **“the carrying out of building, engineering, mining or other operations, in, on, over or under land” or “the making of any material change in the use of any buildings or other land”**.
- In this case it is the material change of use of the Land for the storage of 5 no. caravans including associated fencing.
- This use has occurred for less than 10 years.

**Figure 2: Photographs of caravans taken on 23 October 2024**





#### 4.0 Relevant Planning History

| <b>PLANNING HISTORY</b> |                                                                                                                                                                                                                                           |                                                           |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| <b>Application No.</b>  | <b>Description</b>                                                                                                                                                                                                                        | <b>Decision &amp; Date</b>                                |
| F/1995/63171            | Proposed demolition of existing dwelling and erection of replacement 3no.bedroom dwelling                                                                                                                                                 | Refused<br>05/03/1996                                     |
| F/1997/65373            | Proposed single storey side and rear extensions to dwelling                                                                                                                                                                               | Approved<br>07/05/1997                                    |
| F/1997/66278            | Proposed erection of replacement dwelling                                                                                                                                                                                                 | Approved<br>21/11/1997                                    |
| F/1998/67969            | Proposed erection of dwelling – amendment to F/1997/66278                                                                                                                                                                                 | Approved<br>24/08/1998                                    |
| F/2000/2015             | Proposed erection of detached double garage and installation of velux windows in roof of dwelling (Retrospective)                                                                                                                         | Approved<br>04/09/2000                                    |
| 152107                  | Application for a certificate of existing lawfulness for the use of existing chalet or mobile home as separate residence to the main dwelling.                                                                                            | Refused<br>08/01/2016<br><br>Appeal Allowed<br>20/01/2017 |
| 222373                  | Application for a certificate of existing lawful development for change of use of land to a caravan site.                                                                                                                                 | Refused<br>06/10/2022                                     |
| 223783                  | Full application for the proposed erection of 1no. replacement dwelling and car port, following demolition of existing dwelling.                                                                                                          | Approved<br>10/03/2023                                    |
| 231330                  | Full application for the proposed change of use of land for stationing no. 14 static mobile home caravans for permanent residential use following demolition of existing dwellinghouse.                                                   | Refused<br>16/08/2023                                     |
| 232420                  | Application for submission of details to comply with the following conditions of planning consent 223783 dated 10/03/2023. Condition 3 relates to materials, 6 to electric vehicle charging. 7 to cycle parking and 9 to tree protection. | Approved<br>16/11/2023                                    |
| 240788                  | Full application for change of use of the land for stationing of 9no. mobile homes for permanent residential use for people over the age of 55 years                                                                                      | Refused<br>28/05/2024                                     |
| 242456                  | Application for a certificate of existing lawful development for the siting of 1no. mobile home used as ancillary residential accommodation within the curtilage of the main dwelling.                                                    | Pending decision                                          |

## 5.0 Alleged nature of impact

The key issues relate to the detrimental impact the unauthorised development has on the character and appearance of the Countryside.

## 6.0 Nature of breach of planning control

Without planning permission, the material change of use of the Land for the storage of caravans including associated fencing.

## 7.0 Material Planning policies

|                                             |                                                                                                                                                                               |
|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>National Policy</b>                      | National Planning Policy Framework (NPPF)<br>National Planning Policy Guidance (NPPG)                                                                                         |
| <b>Core Strategy (CS)</b>                   | CP1 – Sustainable Development<br>CP3 – General Principles for Development<br>CP9 – Scale and Location of Development Proposals<br>CP11 – Proposals Outside Development Limits |
| <b>MDD Local Plan (MDD)</b>                 | CC01 – Presumption in Favour of Sustainable Development<br>CC02 – Development Limits                                                                                          |
| <b>Joint Minerals and Waste Plan (JMWP)</b> | DM1 - Sustainable Development<br>DM5 - Protection of the Countryside<br>DM15 - Site History                                                                                   |
| <b>Other</b>                                | Borough Design Guide Supplementary Planning Document<br>Finchampstead Neighbourhood Development Plan<br>CIL Guidance                                                          |

## 8.0 Main Planning Issues

### Principle of Development

The NPPF has an underlying presumption in favour of sustainable development which is carried through to the local development plan. Managing Development Delivery Local Plan Policy CC01 states that planning applications that accord with the policies in the Development Plan for Wokingham Borough will be approved without delay unless material considerations indicate otherwise.

Paragraph 8 of the NPPF identifies as one of its overarching planning objectives the need to protect and enhance the natural, built, and historic environment making it one of the core land-use planning principles that should underpin decision-making.

The site is located outside of development limits within the countryside and therefore Core Strategy Policy CP11 is applicable. CP11 states that, in order

to protect the separate identity of settlements and maintain the quality of the environment, proposals outside of development limits will not normally be permitted except where proposals contribute to diverse and sustainable rural enterprises within the borough, or in the case of other countryside based enterprises and activities, it contributes to and/or promotes recreation in, and the enjoyment of the countryside and does not lead to excessive encroachment or expansion of development away from original buildings.

The change of use of the land for the storage of 5no.caravans, service connections and associated fencing is not considered to fall within the exceptions detailed within policy CP11. It results in encroachment into the Countryside and is considered to be inappropriate development in terms of the context of the area.

#### Impact on character

Policy CP1 states that planning permission will be granted for development proposals that maintain or enhance the high quality of the environment.

Policy CP3 states that development must be appropriate in terms of its scale of activity, mass, layout, built form, height, materials and character to the area together with a high quality of design.

The lawful use of the land where the caravans are currently stored is a residential garden (as outlined in the owner's response to a Planning Contravention Notice dated 6 September 2016) though it is acknowledged this part of the land is now fenced off, with gravel laid on top of the previous grassed area.

The introduction of gravel and use of the land for the storage of caravans on what was previously residential garden results in permanent and solid features in the landscape and represents an unacceptable encroachment of development into the open countryside.

## **10.0 Summary of negotiations with transgressors**

- 10 January 2023 – A Planning Contravention Notice (PCN) was sent to the owner relating to the stationing of caravans/mobile homes for human habitation on the Land without planning permission.
- 31 January 2023 – The PCN response received from the owner querying the location of the additional caravans.
- 23 March 2023 – A updated PCN was sent to the owner with additional plans showing the location of the 6no. caravans.
- 11 April 2023 – The PCN response was received from the owner. Caravan 1 in permanent residential use by a traveller. Caravans 2-6 occupied as short term/ holiday lets.

- 20 April 2023 – A Breach Letter was sent to the owner to cease the use of the caravans 1-6 for human habitation and remove the caravans within 28 days.
- 02 May 2023 – The owner advised that eviction notices have been served on occupants of caravans.
- 26 May 2023 – A letter from the owner was received, requesting additional time for occupants of caravans to vacate the site.
- 06 June 2023 – A letter was sent to the owner allowing an extension of time to 30 June 2023 for the occupants to vacate the site.
- 07 July 2023 – Phonecall with the owner. Two caravans remain occupied as occupants are facing difficulties. Remaining caravans are on sale but proving difficult to sell and remove off the site. The owner was advised to keep the case officer updated on compliance.
- 19 September 2023 – A letter was sent to the owner advising next course of action would be to serve an Enforcement Notice against the unauthorised development.
- 29 January 2024 – A letter was sent to the owner advising without prejudice the Council may support an application for Caravan 1 (Gypsy Traveller Status) given there is a family/ ancillary link to the main dwellinghouse.
- 02 February 2024 – Phonecall with the owner, she stated she wanted to submit a planning application for all the caravans advised the Council would unlikely support this proposal. The owner did confirm the occupier Terri Hope had left the site but the caravan she was residing in remained on site. The owner did confirm the occupier Gemma was still residing on the site.
- 08 February 2024 – Phonecall with the owner. The Council maintained their position that they would not support an application for all caravans. The owner stated she had a right to apply and would continue to do so.
- 14 May 2024 – A site visit was undertaken, and it was established that the caravans had ceased occupation apart from the caravan (Caravan 1) which is in use by the owner's family member (daughter's mother-in-law). The owner was advised on site that the caravans need to be removed, and a suitable timeframe is to be agreed.
- 12 July 2024 – Email correspondence was sent to the owner's planning agent advising that the Council expect the caravans to be removed from the Land by mid-August 2024.
- 21 August 2024 – Email correspondence chain with the owner's planning agent, an additional 28 days was given for the removal of the caravans.
- 23 October 2024 – A site visit undertaken established Caravans 2-6 and associated service connections remain on site. In addition, the caravans were

not occupied. No evidence seen that anyone is living inside them. Caravan 1 remains to be in use by a family member (traveller status).

## **11.0 Cost Benefit Analysis**

**N/A**

## **12.0 Human Rights and PSED**

- The Human Rights Act 1998 means that it is now, subject to certain circumstances, directly unlawful for a public authority to act in a way which is incompatible with a Convention right. In particular Article 8 (respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of property) apply to planning decisions.
- When a planning decision is made there is further provision that the Authority must take into account the public interest. In the vast majority of cases existing planning law has for many years demanded a balancing exercise between private rights and public interest and therefore the Local Planning Authority's decision making will continue to take into account this balance.
- The Human Rights Act is not referred to above because no exceptional circumstances have been raised which require a more careful and sensitive consideration of Human Rights issues.
- When a planning decision is made there is further provision that the Authority must take into account the public interest. In the vast majority of cases existing planning law has for many years demanded a balancing exercise between private rights and public interest and therefore the Local Planning Authority's decision making will continue to take into account this balance.
- In making its decision the Council must also have regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. The duty is to have due regard to the need (in discharging its functions) to:
  - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
  - Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with protected characteristic(s).
  - Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- The PSED must be considered as a relevant factor when considering a decision but does not impose a duty to achieve the outcomes in s.149. The level of consideration required (i.e. due regard) will vary with the decision including such factors as:
  - The importance of the decision and the severity of the impact on the Council's ability to meet its PSED
  - The likelihood of discriminatory effect or that it could eliminate existing discrimination.
  - The Council should give greater consideration to decisions that have a disproportionately adverse impact on a protected characteristic and this impact may be unintentional. In appropriate cases, this may involve an understanding of the practical impact on individuals so affected by the decision. Regard should be had to the effect of mitigation taken to reduce any adverse impact.
- Further, the PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The Council is also entitled to take into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions, which have an adverse impact on protected groups.
- In this case there are no known equality issues arising from taking any further action as the 5no. caravans are no longer occupied, and the requirement is to remove stored caravans, associated fencing, and to disconnect the services.

### **Proportionality**

- The Council believes it is acting in a fair and reasonable manner as it has tried informally to resolve the breach of planning control through the planning process however, this course of action has failed. All other forms of action to secure compliance with planning control and uphold council policies have been considered and cannot effectively be achieved by any lesser means than those recommended below.
- Furthermore, Paragraph 59 of the NPPF states that '*effective enforcement is important to maintain public confidence within the planning system*'. In this case it is considered expedient to take enforcement action for the reasons outlined in this report in order to protect the Countryside from unauthorised development and the character of the immediate area. It scores 5 on the Tool to Assist to Assess Harm (See Appendix 1) which indicates formal action should be taken.

### **14.0 Recommendation – Issue an Enforcement Notice**

It is recommended that an enforcement notice be served to secure the cessation of the use of the land for storage purposes and the removal of the 5no caravans, including associated fencing.

Alleged Breach:

- Without planning permission, the material change of use of the Land for the storage of 5no. caravans including associated fencing.

Reasons for issue:

- i) It appears to the Council that the above breach of planning control has occurred within the last ten years.
- ii) The storage of caravans and associated works represents an unacceptable encroachment of development into the open Countryside and is harmful to the immediate character of 'the Land'. As such the unauthorised development conflicts with the National Planning Policy Framework 2023 and Wokingham Borough Adopted Core Strategy 2010 Policies CP1, CP3 and CP11.
- iii) To remedy the breach of planning control.

Steps and time for compliance:

- i) Cease the use of the Land for storage purposes.
- ii) Remove from the Land all caravans, including those labelled 2-6 outlined in blue on the attached Plan.
- iii) Disconnect all pipes and cables in connection with the supply of water, gas, electricity and foul drainage and the disposal of sewage.
- iv) Remove from the Land the fencing in the approximate position marked by a black line on the attached Plan.
- v) Remove the resulting materials from steps ii, iii and iv above from the Land.
- vi) Restore the Land to its former condition before the breach took place.

Time period:

3 months from the date this notice takes effect.

Recommendation: Agreed/ ~~Not Agreed~~

Signed Planning Enforcement Team Leader

A handwritten signature in grey ink, appearing to read 'P. Varley'.

Dated: 28.11.24

Report Author (Research): BPP

**APPENDIX 1** Tool to assist with assessing harm

| Number | Factor                                                                                                                                     | Impact                                                                                         | Score                                                                |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| 1      | Is the breach:                                                                                                                             | Worsening? (1)<br>Stable? (0)                                                                  | 1                                                                    |
| 2      | Highway safety issue                                                                                                                       | Yes? (2)<br>No? (0)                                                                            | 0                                                                    |
| 3      | Other safety issue<br>(not covered by other legislation)                                                                                   | Yes? (2)<br>No? (0)                                                                            | 0                                                                    |
| 4      | Is it causing serious or irreversible harm to the environment or surrounding area                                                          | Yes - Widespread? (2)<br>Yes – Local? (1)<br>None? (0)                                         | 2                                                                    |
| 5      | Age of breach                                                                                                                              | Within 6 months of immunity? (2)<br>Less than 3 months old? (1)<br>More than 3 months old? (0) | 0                                                                    |
| 6      | Planning policy breach                                                                                                                     | Yes? (1)<br>No? (0)                                                                            | 1                                                                    |
| 7      | Flood risk                                                                                                                                 | Zone 3 (2)<br>Zone 2 (1)<br>Zone 1 (0)                                                         | 0                                                                    |
| 8      | Breach of planning condition or Article 4 direction                                                                                        | Yes? (1)<br>No? (0)                                                                            | 0                                                                    |
| 9      | Conservation Area or adjacent to                                                                                                           | Yes? (1)<br>No? (0)                                                                            | 0                                                                    |
| 10     | Listed Building or affecting character or setting of a listed building/ Registered Listed Park and Garden or other adjacent sensitive site | Yes? (1)<br>No? (0)                                                                            | 0                                                                    |
| 11     | Particularly sensitive site e.g. SSSI, AONB, Scheduled Ancient Monument, Archaeological Importance                                         | Yes? (1)<br>No? (0)                                                                            | 0                                                                    |
| 12     | Affecting TPO trees/Ancient Woodland/Ancient or Veteran Trees                                                                              | Yes? (2)<br>No? (0)                                                                            | 0                                                                    |
| 13     | Undesirable precedent<br>(provide details)                                                                                                 | Yes? (1)<br>No? (0)                                                                            | 1 (may encourage nearby landowners to store caravans on site without |

|  |  |       |                         |
|--|--|-------|-------------------------|
|  |  |       | planning<br>permission) |
|  |  | TOTAL | 5                       |

NB For formal enforcement action to be taken it is likely that the harm score will need to be 5 or more. This is only one of the tools/tests that the Council will use to assess whether formal action should be taken.