

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242918
Site Address:	Sheeplands Farm, Goffs Barn, Wargrave Road, Wargrave, Wokingham, RG10 8DJ
Expiry Date:	27 January 2025
Site Visit Date:	10 December 2024
Proposal: Application for a certificate of existing lawful development for the use of land for the stationing of 64no. mobile homes for use as habitable accommodation by farm staff, staff shop, staff launderette portacabin and staff parking, and operational development including staff amenity building, staff gazebo building and associated pathways, hardstanding and drainage.	

PLANNING HISTORY

Application No.	Description	Decision & Date
CLE/2010/1310	Application for a certificate of lawfulness for existing building works relating to 21 mobile homes comprising construction of earth bunds, erection of fencing, laying of underground drains and services and construction of hardstandings.	Refused 18/08/2010
150522	Proposed change of use of land for the siting of four mobile homes for occupation by agricultural workers	Refused, dismissed at appeal 27/06/2016

REPRESENTATIONS

Twyford Parish Council - The Planning & Amenities Committee wish to express their concern that full planning was not applied for and note the lack of an approved drainage strategy.

INFORMATION PROVIDED

By the applicant:

- Aerial Photographs 2004 – February 2022
- CLE/2010/1310 Officer Report
- 150522 Officer Report
- Camp Site Inspection Sheet 28th May 2018
- Fire Drill Record Sheets for 31st May 2018, 28th February 2020, 29th January 2021, 30th May 2022, 25th August 2023 and 21st June 2024.
- Caravan Occupation lists from 3rd September 2017, 4th February 2021, 24th August 2023

• Statutory Declaration from an employee of the site (Hall Hunter Partnership) dated 26th November 2024. • Current permanent occupancy lists for mobile homes on site
By the Council: • 10th December 2024 Case Officer Site Visit Photos • Postal Address information • Council Tax and Business Rates information
By third parties: • None

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 *material change in the use* of land.

Timescale

Section 171.B(1) 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 years beginning with the date on which the operations were substantially completed. However, The Act includes transitional provisions which provide that, where operational development was substantially completed before the 25 April 2024, the 4 year period will continue to apply.

Section 171B(2) Where there has been a breach of planning control consisting in 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 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.

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(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:
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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

CASE LAW

The Courts have held in *Gabbittas 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 to be accepted. If the Local Planning Authority 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.

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 accurately describes the nature of the use, the decision maker must modify/substitute each description so as to accurately 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 Local Planning Authority, 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

Proposal Description:

The application is for a Certificate of Lawful Existing Use to regularise for the use of land for the stationing of 64no. mobile homes for use as habitable accommodation by farm staff, staff shop, staff launderette portacabin and staff parking, and operational development including staff amenity building, staff gazebo building and associated pathways, hardstanding and drainage.

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 since the submission of this application (25th November 2014).

In the case of the operational development (staff amenity building, timber gazebo, pathways/hardstanding and drainage), the Applicant states that they were all substantially completed prior to the 25th April 2024, meaning they must have been completed on site before 25th April 2020.

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”.

Site Description:

The application site consists of a mobile home park situated on Sheeplands Farm, Wargrave Road. The farm is run by the Hall Hunter Partnership who employ workers for their farms who subsequently can live within the mobile home park during their employment.

The site is accessed via a long and narrow rural road from Wargrave Road to the east and is visually enclosed by large agricultural polytunnels to the south, north and west. Immediately east of the application site is a main railway line that connects Twyford and Wargrave train stations.

Due to the site's predominantly rural/agricultural surroundings, the site is located within the designated Countryside and Green Belt.

Evidence submitted by the Applicant:

Historic aerial imagery:

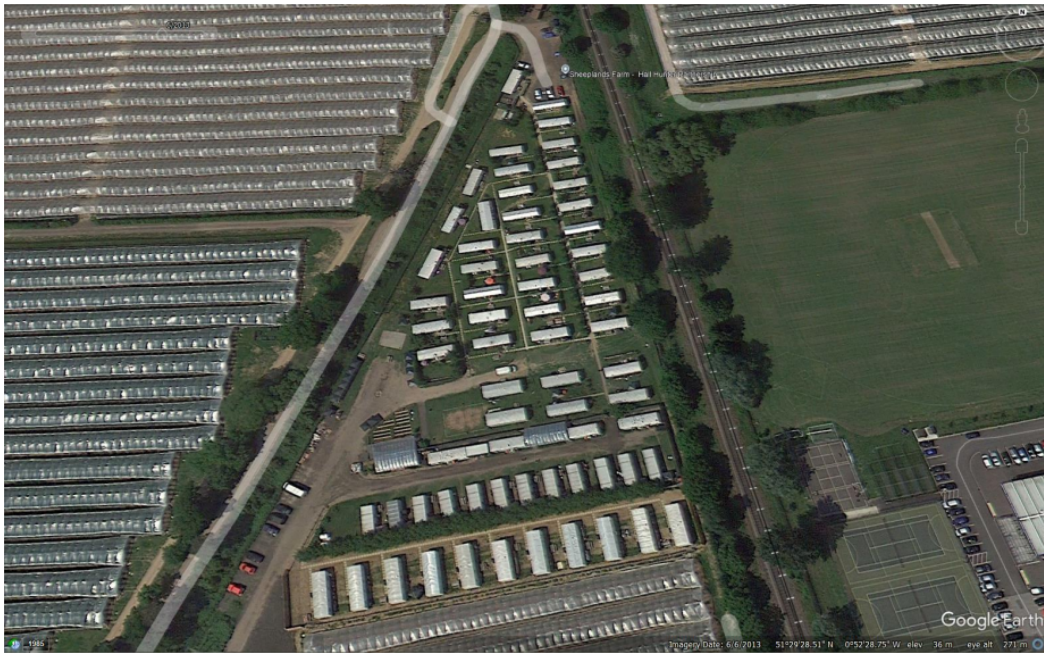
January 2004



June 2009



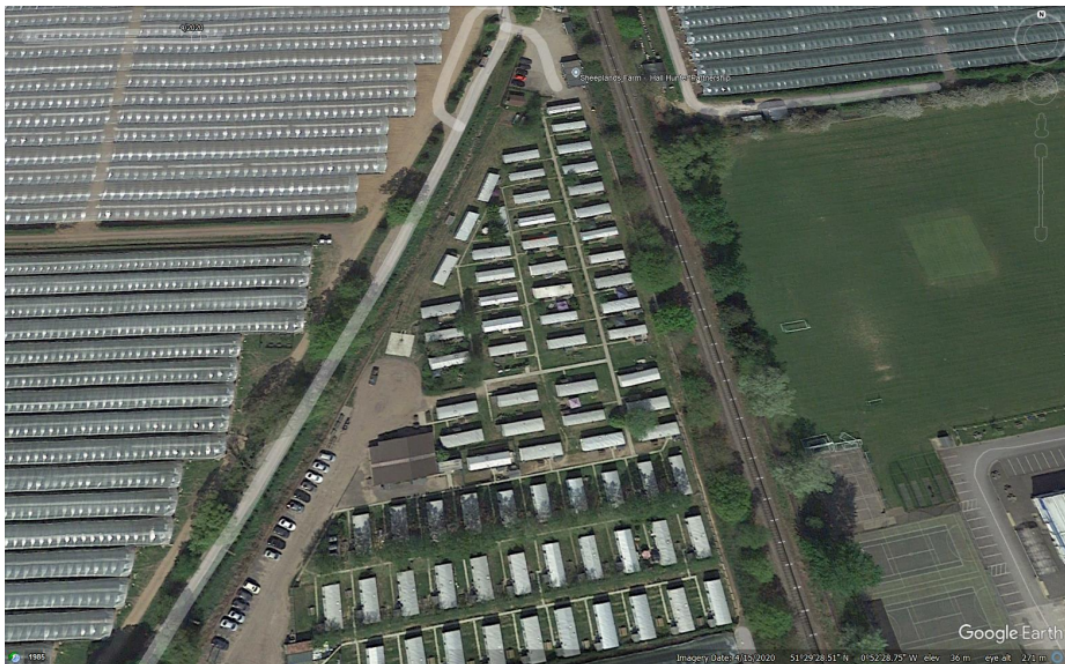
June 2013



March 2017



April 2020



July 2021



February 2022



CLE/2010/1310 Officer Report:

The Officer Report for this application noted that there were mobile homes present on the site at the time that this application was considered in September 2010. The report refers to the evidence submitted with the application stating that mobile homes were first brought onto the red line site area in summer 2003. The report also noted that an aerial photograph taken in 2003 shows mobile homes on the red line land.

Application 150522 Officer Report:

The Officer Report relating to this application referred to the presence of 60 temporary mobile homes for staff. This report was dated 7th December 2015.

Camp Site Inspection Sheet 28th May 2018:

This sheet lists the mobile homes on the site, totalling 64, at the time of the inspections in May 2018.

Fire Drill Record Sheets for 31st May 2018, 28th February 2020, 29th January 2021, 30th May 2022, 25th August 2023 and 21st June 2024:

These sheets listed the number of occupants of the mobile homes at the time of the fire drills in May 2018 (219 staff), February 2020 (51 staff), January 2021, May 2022 (367 staff) and June 2024 (410 staff).

Caravan Occupation lists from 3rd September 2017, 4th February 2021, 24th August 2023:

These lists include the names of each occupant on site and which mobile home they are living within at the time of recording.

Statutory Declaration from an employee of the site (Hall Hunter Partnership) dated 26th November 2024:

- The employee has been employed at the site since August 2014.

- The employee confirms that Building A (staff amenity building) was substantially completed in March 2018 (steel struts within the building are dated 1st December 2017) and Building B (timber gazebo) was completed at the same time.

Evidence submitted by the Council:

10th December 2024 Case Officer Site Visit Photos:



Assessment:

Historic aerial imagery:

The January 2004 aerial shows that the majority of the red line site area was in use for the stationing of 31 mobile homes with associated paths. The site shop is in place.

In June 2009, the aerial shows that the site had expanded to the south through the addition of a further 12 mobile homes to the southern edge of the site and the

arrangement of the mobile homes on the remainder of the site has been altered. In total there were 53 mobile homes on the land at the time. A staff amenity polytunnel is evident for the first time and the shop remains in place. An area of hardstanding has also been formed to the south-west of the site with evidence of vehicle parking.

In June 2013, a further row of 11no. mobile homes had been added to the site by this date bringing the total to 64. The staff amenity polytunnel building is evident in the photograph as well as the site shop. The launderette portacabin is evident and the hardstanding/parking area had been enlarged at this time.

In March 2017, 64 mobile homes remained on the site at this time. The hardstanding area remains unchanged and the staff amenity building and shop are evident. The position of the launderette portacabin had been changed by this date.

In April 2020, a new staff amenity building is evident on the site which replaced the former polytunnel structure in March 2018. The gazebo is also shown on the site for the first time (this was constructed Spring 2018). In addition, by this time a further row of 11 mobile homes had been added to the southern boundary of the site (these are not within the red line land).

The 2021 and 2022 aerials do not visually differ from the 2020 aerial with the same number of mobile homes being present within the red-line.

The submitted aerial photographs are clear and show that the red line land was in use for the stationing of mobile homes between January 2004 and February 2022, a period in excess of 10 years. Within the application red-line, 64no. mobile homes have existed since at least 2013. The statement submitted by the applicant does make reference to the regularisation of 63 homes at the beginning of the document but their following evidence consistently refers to the presence of 64.

Furthermore, it is clear from the aerials that all of the operational development on site has been in place well before the 25th April 2024 and therefore in excess of four years.

10th December 2024 Case Officer Site Visit Photos:

The Case Officer's observations on site and the associated photos confirmed that the layouts for the homes and amenity buildings correlates with the plans submitted. A total of 64 homes were counted within the application red-line, all indicated with numbers painted onto the homes.

The staff amenity building, launderette, gazebo and staff shop were all present on site but the shop building did not appear in active use, with the interior appearing run down with stock/boxes scattered across the floor/surfaces.

CLE/2010/1310 & Application 150522 Officer Reports:

These Officer Reports re-affirm the conclusions above that the siting of mobile homes at this site has occurred since 2003.

It is however noted that the 150522 report noted the presence of 60 mobile homes at the time, a number inconsistent with the number seen on the 2013 and 2017 aerials.

Camp Site Inspection Sheet 28th May 2018:

This inspection sheet re-affirms that there were 64 homes on site, and inspected, on 28th May 2018.

Statutory Declaration from an employee of the site (Hall Hunter Partnership) dated 26th November 2024:

This declaration re-affirms the applicant's statement that the staff amenity building and gazebo have been substantially completed prior to 25th April, with them being substantially completed in March 2018.

This statutory declaration makes no reference to the mobile home and their consistent occupation in excess of 10 years.

Caravan Occupation lists from 3rd September 2017, 4th February 2021 & 24th August 2023:

No occupation lists prior to 2017 have been provided.

The occupation list from September 2017 indicates that only 32 of the 64 mobile homes were occupied at the time of recording.

In February 2021, only 21 of the 64 mobile homes were occupied at the time of recording, with one additional occupied home being located outside of the application red-line.

In August 2023, only 37 of the 64 mobile homes were occupied at the time of recording. Records of four other homes were noted but these are located outside of the application red-line.

These occupation lists vary significantly in both the number of occupants and which homes have been occupied since 2017, with no evidence of occupation provided for the three years prior. It is clear that not all 64no. mobile homes within the application red-line have not been consistently in use in excess of 10 years.

Current permanent occupancy lists for mobile homes on site:

Following on the occupancy lists above, the applicant provided a list of the homes on site currently *permanently* occupied on site as of 15th January 2025. The total of homes permanently occupied within the application red-line is only 18. Again, this implies an inconsistent use of the mobile homes sited on the land since 19th November 2014.

Fire Drill Record Sheets for 31st May 2018, 28th February 2020, 29th January 2021, 30th May 2022, 25th August 2023 and 21st June 2024:

The number of occupants on site between the dates of the fire drill records varies substantially, with only 52 occupants being present in February 2020 compared to 219 in May 2018, 367 in May 2022 and 410 staff in June 2024.

The above, in particular the significant drop in occupants between May 2018 and February 2020, corroborate the evidence above which concludes that the occupation of the mobile homes on site has not been consistent since 19th November 2014.

Postal Address/Council Tax and Business Rates information

There are no records of any postal addresses for the mobile homes on site, nor Council Tax or Business Rates. Whilst not a direct indicator of inconsistent use, it does enforce the viewpoint that the homes have not been used as a consistent /permanent form of occupation in excess of 10 years.

Conclusion:

It is not disputed that the 64no. mobile homes within the application site have been on site in excess of over 10 years. However, the evidence submitted by the applicant, combined with that of the Council's, leads to the conclusion that their occupation by farm staff has not been consistent in use across the same time period.

Similarly, there is no dispute that the stationing of the staff shop and launderette portacabin have existed for a period in excess of 10 years. However, their use is ancillary/part and parcel to the use of the site for the occupation of the mobile homes for farm staff which has already been concluded as inconsistent across the previous 10 years. No evidence claiming the consistent use of the launderette and shops uses has been provided either and as outlined above, the staff shop did not appear in active use during the Case Officer's site visit.

Turning to the operational development (staff amenity building, timber gazebo, pathways and drainage), the Council accept they were substantially completed four years prior to 25th April 2024. However, this development was constructed solely for the purposes of providing amenity space for the occupants of the mobile homes on site.

When the principles of *Murfitt v Secretary of State for the Environment* [1980] are considered (with additional consideration for *Kestrel Hydro v Secretary of State for Communities and Local Government* [2016] and *Caldwell v Secretary of State for Levelling-Up, Housing and Communities* [2023]), the change of use has brought about the operational development, rather than the operational development bringing about the change of use. This means that the operational development must have been substantially completed 10 years prior to the date of the application's submission, rather than four.

The staff amenity building and timber gazebo were constructed between 2017 and 2018, less than 10 years prior the submission of the application. Some of the footpaths that access the mobile homes in the northern section of the site have been in situ for over 10 years which is accepted. However, their length has expanded in more recent years to the south (less than 10) to accommodate additional mobile homes.

In terms of drainage, no details of this have been provided and it was unclear on the site visit where this operational development is located. There is also no evidence from historic aerials of its implementation.

With regards to the hardstanding and its use for staff parking, no evidence has been provided demonstrating that the parking on it is exclusively linked to the occupants of the mobile homes and it has already been concluded that the associated occupation use has not been in consistent use for a period in excess of 10 years. Despite this, The Council accept that the hardstanding has been in situ for a period in excess of 10 years. Therefore, notwithstanding the lack of evidence, this element of the operational development is considered lawful through the passage of time. Its use for staff parking, however, is not.

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 and there would be no significant adverse impacts as a result of the development.

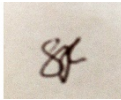
RECOMMENDATION

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 not been demonstrated that the stationing of 64no. mobile homes for use as habitable accommodation by farm staff, staff shop, staff launderette portacabin and staff parking has been occurring for a consecutive period of ten years i.e. since 25 November 2014.

With regards to the staff amenity building, staff gazebo building and associated drainage and southern pathways, being ancillary to the use of the site, it has not been demonstrated that they were substantially complete/constructed on site 10 years prior to the submission of the application.

However, on the balance of probabilities, the hardstanding constructed to the south of the site and the footpaths in the northern section of the site shown in green on the attached plan have been in situ for a period in excess of 10 years.

Based on the above, a split decision will be issued and a draft certificate is set out below. The areas of hardstanding and footpaths considered lawful are highlighted in green in the decision notice.

Date:	23 January 2025
Earliest date for decision:	16 December 2024
Recommendation agreed by: (Authorised Officer)	
Date:	23.1.25