



Planning

Certificate Statement

Client:

Susan Elgar

Bluebell Farm

Commonfield Lane, Wokingham, RG40 4PR

S191 application for the incidental use of mobile homes in association with main dwelling.

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01 Introduction

- 1.1 This statement is produced to support a planning application for a Certificate of Lawful Development for the use of an existing caravan as an ancillary residential accommodation to the main dwelling of Bluebell Farm.
- 1.2 This planning statement will introduce the meaning of 'development' in accordance with the Town and Country Planning Act 1990, summarises the relevant legal tests and set out the application in light of these. The conclusion reached is that the development is lawful and so no enforcement action can be taken.
- 1.3 It is respectfully requested that the appendices accompanying this report are kept private and confidential for the use of the Local Planning Authority only, as they contain personal and private information about the applicant and occupants. This information is submitted as evidence to support the claims within this report.
- 1.4 In addition to this report, the application is accompanied by the appropriate certificate application forms, appendices and a 1:1250 Site Location Plan.
- 1.5 The relevant application fee will be submitted by the applicant separately.

02 Town and Country Planning Act 1990

2.1 Section 55(1) of the Town and Country Planning Act 1990 defines development as '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'.

2.2 Section 55(2) of the Act defines explicitly what is considered to not be development (activities and operations that do not require an application for planning permission) in this regard S55(2)(d) and (f) state:

"(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such...

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purposes of the same class".

2.3 Section 191 of the TCPA defines lawfulness for the purposes of the Act and states in S191(2): "uses and operations are lawful at any time if –

"(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time limit for enforcement action has expired or for any other reason)...".

3.1 In this instance the LPA has requested an application pertaining to a mobile unit within the curtilage of the dwelling known as Bluebell Farm. It is common ground between the applicant and the LPA that the touring caravan is not operational development and does not require planning permission in its own right.

2.4 It is considered that the mobile unit is incidental to the everyday activities/use of the dwellinghouse and its occupiers and therefore a material change of use of land has not occurred. As such, the activities on site do not require planning permission.

2.5 In light of the above the only conclusion is that all occupiers would be a single household and the planning unit would still be within the same use class of Use Class C3.

2.6 Circular 10/97 (Enforcing Planning Control) was archived in March 2014 and replaced by the National Planning Policy Guidance (NPPG). The NPPG reiterates the previous guidance of the Circular and in paragraph 006 states that *"the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to*

co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land”.

2.7 The following section outlines the evidence submitted within the Appendices, and explains how this evidences immunity from enforcement action.

03 Facts of the Submission and Case Law

3.2 **Planning Unit and Ancillary Uses:** Relevant to the conclusion that the mobile home does not require planning permission is the judgement of ***Burdle and Williams v SSE and New Forest DC [1972] 1 WLR 1207*** (hereafter to referred as '*Burdle*'). *Burdle* found a planning unit is defined by its unit of occupation and there are three categories to consider in this regard:

1. A single planning unit where the unit of occupation has one primary use and other activities are **incidental or ancillary** (a whole unit of occupation);
2. A single planning unit where the unit of occupation is in a mixed unit where neither use is incidental to the other (a whole unit of occupation);
3. Or the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated uses (separate units of occupation).

3.3 It is acknowledged the touring unit has facilities capable of independent day to day occupation however, this has been widely held in case law to still be capable of being an incidental/ancillary use (not constituting a material change of use of land).

3.4 The case of ***Uttlesford DC v SSE & White [1992] JPL 171*** was concerned with the change of use of a detached garage to a 'granny annexe' within the curtilage of a dwellinghouse. Despite the fact the annexe provided these facilities it was held that it would not necessarily result in the creation of a separate planning unit from the main dwellinghouse and ergo would not constitute a **material** change of use.

3.5 Further to the above, the case of ***Whitehead v SSE [1992] JPL 561*** is particularly relevant where it concerned a converted barn within the curtilage of a dwellinghouse to provide live-in accommodation for a house keeper (fully self-contained). The court held that this would be for a purpose *incidental* to the enjoyment of the main dwelling, and integral to the main use of the planning unit as a single dwellinghouse.

3.6 It should be noted that outside of the scope of the GPDO the terms incidental and ancillary are interchangeable. The case of ***Harrods Ltd v SSETR [2002] EWCA Civ 412*** had deliberated the application of S55(2)(f) of the Act where it had been argued that were an activity to take place in a planning unit that cannot be described as 'ordinarily incidental' this would

constitute a material change of use. However, Lord Justice Schiemann in paragraph 20 of the judgement is clear: “...*the proper approach to these cases by the local planning authority is to start by **considering whether what is involved amounts to a material change of use. That is the statutory test.** The case law reveals the application of that test to a variety of different situations. In the course of doing that **different phrases have been used...Those phrases are merely an aid to judicial exegesis**” (emphasis added is my own).*

3.7 Lord Justice Sedley in paragraph 27 agreed and clarified: “*The crucial thing to which my Lord’s judgement draws attention is that while there is no statutory formula for testing whether a particular use is within an established use of land, there is a statutory formula for its counterpart: is a material change of use involved? If it is, then, subject possibly to the Use Classes Order, the use in question is not within the established use: if not then it is...what matters, as Schiemann LJ has explained, is that the permitted use of land in a case like the present is defined by its use class*”.

3.8 Whether an activity is ancillary or incidental to a primary use is a matter of fact and degree and it is considered the answers to the PCN (**appendix 2**) provide the facts for this submission as does the LPAs previous assessment in a refused wider application (**appendix 1**), but in short, should the LPA agree the unit of occupation for the site is occupied by a single family unit as per the lawful use of the site, no material change of use has occurred

and the certificate should be granted.

3.9 **Appendix 1: Officer Report for Refused Application (06/10/2022):**

this appendix comprises the officer report for application ref. 222373 which sought to confirm the lawfulness of the site as a caravan site. Whilst this application was refused on the basis the wider caravans stationed on the land were not lawful it should be noted that the LPA had previously considered two separate mobile homes/caravans on the site (one being a different caravan occupied by different family member(s)) occupied by family members.

3.10 These caravans were assessed separately from the wider use being applied for and the Officer Report concludes: *"...the two caravans of [family members]...remain incidental to the use of the existing residential dwelling and thus, no material change of use has occurred"*.

3.11 It should be noted there are currently two mobile homes/caravans the subject of this application occupied by family members (one the same as assessed by the refused Certificate). The previous assessment of the LPA had found that two mobile homes occupied by family members in conjunction with the main dwelling was considered incidental and ergo not a material change of use (this is lawful). It should be noted in correspondence with the LPA prior to this application, the LPA had stated the two existing caravans being ancillary required planning permission. This

is clearly contradictory to this previous assessment.

3.12 In coming to this conclusion, the officer report had confirmed the first mobile home (still on site and occupied in the same manner today), amongst other factors, using the same shared garden area and not creating a separate address meant it was incidental to the dwelling (not exhibiting a material change of use).

3.13 The other caravan referenced in this report ceased to be on site in 2019 however, the LPA still considered both caravans to be incidental (part of the same planning unit as the main dwelling). As such, should the activities of the second mobile home on site (subject to this application and not present at the time of 222373) be similar to the circumstances previously described the LPA can only conclude that a material change of use has not occurred.

3.14 **Appendix 2: Answers to Planning Contravention Notice submitted to WBC (30/08/2024):** this appendix comprises the answers to the PCN served on the site (the LPA has previously received these documents as part of their investigations). The answers to the PCN summarise the following:

- The mobile homes subject to the PCN are permanently kept on the land;

- Each mobile home features a living area, bedroom(s), a kitchen(ette) and either a shower room or bathroom;
- Facilities of the main dwelling are shared with the occupiers of the mobile home on a daily basis;
- The mobile homes and the main dwelling share a parking area;
- The garden is shared amongst all occupiers;
- There are no separate postal addresses for the mobile homes;
- All occupants live as one family across both mobile homes and the main dwelling.

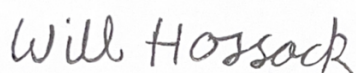
3.15 The above demonstrates that the mobile homes the subject of this application are part of the main use of the planning unit which has a lawful C3 Use Class and all occupiers are one family.

3.16 For clarity the Use Classes Order defines Class C3(a) as: “*Use as a dwellinghouse (whether or not as a sole or main residence) by - (a) a single person **or by people to be regarded as forming a single household***”. This does not put a limit on the number of occupiers like the remaining aspects of the C3 use class it only requires those within the planning unit to form a single household.

3.17 The use of the site by the current occupiers does not provide any activity that results in the lawful use of the site changing use class.

04 Conclusion

- 4.1 It has been demonstrated above that a material change of use has not occurred and the mobile homes and their occupancy do not require planning permission, and are thus immune from enforcement action.
- 4.2 If the Council are in possession of any information that leads them to a different view to that set out above, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment.
- 4.3 However, it is considered that the submitted evidence meets the tests of being clear and unambiguous. On the balance of probability, based on the submitted evidence, it is therefore requested that the application for a certificate of existing lawful use is approved.

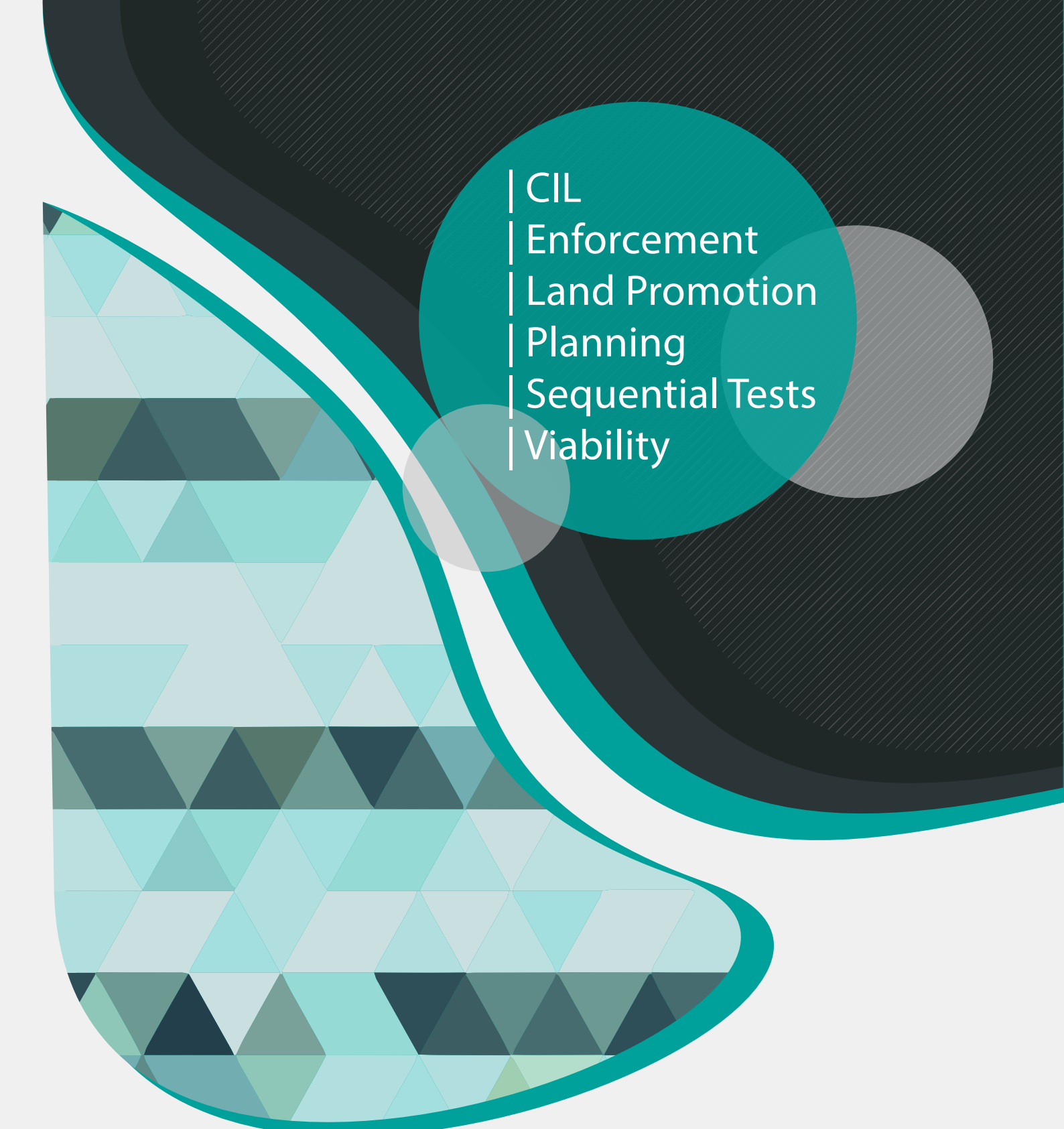


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