

Received Date:	4 February 2025
Expires:	1 April 2025
Application Number:	250250
Site:	Walnut Tree Farm, Benham Lane, Riseley, Wokingham, RG7 1RY
Application:	Application for a certificate of lawfulness for the proposed stationing of three additional caravans for residential purposes.

1. Relevant Planning History

Application Number	Proposal	Decision Date	Decision
243191	Prior approval submission for demolition of 1 no. open sided barn and 2 no. sheds.	15/01/2025	Prior Approval Approval
241111	Full application for the proposed decking, patios and pathways to be added to 6no residential mobile homes for access and to include changes to landscaping. (Retrospective).	24/09/2024	Conditionally Approved
232783	Application for a certificate of lawfulness for the proposed stationing of six additional caravans.	18/01/2024	Approved
232111	Application for a certificate of existing lawful development for the use of the land for the stationing of 6 no. residential mobile homes.	02/11/2023	Approved
201111	Application for a lawful development certificate for the proposed stationing of six additional caravans for residential purposes.	24/06/2020	Refused
200637	Application for a lawful development certificate for the proposed stationing of 4 additional caravans for residential purposes.	28/04/2020	Approved
193132	Application for a certificate of lawfulness for the proposed use of the land for the siting of 1 no. (additional) mobile home for residential purposes.	06/02/2020	Approved
28855	Application for site licence	09/11/1987	Approved
28856	Siting of 1 mobile home	03/11/1987	Approved
PD/468/73	Erection of dutch barn, calf rearing boxes	21/09/1973	Approved

2. Site Description

The site is a deep plot of land located at the junction between Part Lane and Benham Lane within designated countryside currently occupied by 3 agricultural buildings and 12 mobile homes with raised platforms/patios and a service road, gates and fencing as well as other residential paraphernalia.

There are two existing accesses to the site – one from Part Lane and the other from Benham Lane. The access to Part Lane has been blocked and is not currently used. Whilst the site was part of an agricultural unit in the past, it currently benefits from lawful development certificates for the siting of six residential mobile homes (ref 232111) and for 6 additional caravans (ref 232783), see planning history summary above. The demolition of the existing disused agricultural buildings was recently confirmed to be permitted development (ref 243191).

3. Land/ Property Designations

- The site is situated within designated countryside.
- There are no listed buildings at the site although the site forms part of the historic setting of Tudor Farm nearby and to the north-west and Glasspool House to the north-east.
- The Roman Road from Silchester to London lies just outside the borough a short distance to the south.
- The property is not within ‘Article 2(3) land’ (Town and Country Planning (General Permitted Development) Order 2015).
- The site is not subject to any wildlife or habitat designations. However, it is located within 1.3km of Thames Basin Heath Special protection Area.
- TPO 1735/2020 protects Woodland (all species) immediately to the East of the site; individual oak trees T1, T2, and T3 in the hedgerow that forms the western boundary; and all trees of whatever species within an area along the southern site boundary.

4. Legislation

Town and Country Planning Act 1990 (as amended)

s.55 Defines the meaning of “development” and “new development”.

s.57 Planning permission is needed for all development of land.

s.187a Enforcement for breach of conditions

s.192 Applications for Certificates of Lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether—
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

s.191 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.

Caravan Sites and Control of Development Act 1960

s.29 Defines caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—
(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or
(b) any tent;

Caravan Sites and Control of Development Act 1968 (as amended)

s.13 (1) Defines twin unit caravans as:
A structure designed or adapted for human habitation which—
(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),

s.13 (2) Provides the maximum dimensions of a caravan as:
(a) length (exclusive of any drawbar): 20m;
(b) width: 6.8m;
(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 3.05m.

5. 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.

6. Relevant details of the proposal:

Application for a certificate of lawfulness for the proposed siting of three additional caravans for residential purposes within the site, resulting in a total of 15 residential caravans sited within the site's boundaries.

7. Assessment against legislation:

This application needs to be assessed against the relevant planning legislation to determine whether the proposed mobile home would amount to operational development or constitute a material change of use of the land. As with any Certificate of Lawfulness application, the burden of proof is on the applicant and the Local Planning Authority is required to test the evidence on the balance of probability.

Section 55 of the Act stipulates “development,” means 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.

For the purposes of the Act “building operations” includes demolition of buildings, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder (s55(1A) of the Act).

Whether the proposal would amount to a material change of use

The planning history summarised above confirms that up to 12 caravans can lawfully be sited within the boundary for residential purposes. A caravan site licence (ref 28855) and corresponding planning permission (28856) issued in 1987 included ‘one mobile home’ in the description. However, it did not include any condition restricting the number of mobile homes that can be sited.

Following the judgement of *I'm Your Man Limited v Secretary of State for the Environment [1998] EWHC 866 (Admin)*, (1999), if a planning permission does not impose any limitation including the total number of caravans on the site, via a condition(s), then there is no restriction on the number of caravans that can be sited within the red line area. The certificate of lawfulness applications approved since the original permission amount to the lawfulness for the siting of 12 caravans for residential purposes.

In this case, it must be established whether the introduction of three additional caravans on site for residential purposes, amounting to a total of 15, would amount to a material change of use of the land requiring planning permission.

A material change of use is described to occur where an existing use has become intensified (*Brooks and Burton Ltd v Secretary of State for the Environment [1977] 1 W.L.R. 1294*). However, mere intensification of use will not necessarily itself amount to a material change of use unless this results in a material change in the character of a use (*Blum v Secretary of State for the Environment [1987] JPL 278*). A necessary, but not sufficient, condition of a material change of use by intensification would be an increase in the scale of the activities on the site, the effects of which matter (*Hertfordshire CC v Secretary of State for Communities and Local Government [2012] EWHC 277 (Admin)*). A baseline must be established regarding what may be encompassed within the permitted use. In *Kensington and Chelsea RBC v Secretary of State for the Environment [1981] J.P.L. 50* the court held "...if the planners were incapable of formulating what was the use after 'intensification' and what was the use before 'intensification' then there had been no material change of use."

Planning Unit

The first step in the analysis is to identify the correct planning unit. This is because any judgement as to whether the proposed use will be a material change of use will be made by reference to the planning unit.

Following the case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, there are three broad categories to be considered:

"First, that 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 should be considered.

But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its ancillary activities) ought to be considered as a separate planning unit".

The approved plans for both the caravan site licence (ref 28855) and corresponding retrospective planning permission (ref 28856) issued in 1987 included a large L shaped plot of land of which the current application site forms a part. The eastern section of the L shaped plot is occupied by a residential dwelling named Walnut Tree Cottage that was subsequently detached from the larger plot and sold off. The remaining 0.85ha of the original plot forms the site for the current application and those considered under 193132, 200637, 201111, 232111 and 232783. The 1987 application described the use of the land as "a site for a caravan/ mobile home" in the decision notice and in the application form of 1987 permission, the applicant described the existing use of the site as "residential/ smallholding".

Although the title plan for the site includes a line dividing the site into northern and southern sections, it is not determinative to say if the site had two different uses physically separated by a boundary in the past. It was noted during the site visit that the site is currently occupied by 12 residential caravans and disused agricultural buildings. Also, a road is laid between the caravans and the agricultural buildings. However, there are no physical boundaries within the site, in the form of hedges or fencing, separating the caravans or the Dutch barn, although the agricultural buildings have been partitioned off with close boarded fencing.

There is no evidence of any agricultural use currently taking place within the site and the majority of the agricultural buildings have been enclosed with fencing. It is also acknowledged that the three disused agricultural buildings are intended to be demolished fulfilling the approval of application ref 243191. As such, it is considered that the planning unit for the current application comprises the entire 0.85ha of rectangular plot of land that formed part of the 1987 permission, and that the primary use of the unit is a caravan site for permanent residential purposes.

Whether the proposal results in a material change in the character of the existing use

It is proposed that an additional three caravans for residential purposes will be sited upon the land with existing lawful use for the stationing of 12 residential caravans, amounting to a total of 15. As noted above, whilst the 1987 permission including “siting of 1 mobile home” in the description, there was no condition limiting the number of caravans that could be stationed with the site’s boundaries. As such, an assessment needs to be carried out to determine if the siting of an additional three caravans would result in intensification to an extent which would result in a material change in the character of the existing use and subsequently constitute development requiring planning permission.

Firstly, the character of the existing lawful use of Walnut Tree Farm must be identified. In determining the existing use, it is necessary to identify the true and precise character of the use (*London Residuary Body v SSE* (1989) 58 P&CR; *Westminster CC v British Waterways Board* [1985] AC 676). It will then need to be determined whether the proposed use is of the same character as this, or whether it would in a material change in the character of the use.

The relevant case law has established that a “mere intensification” (i.e., purely looking at the increase in the number of caravans) will not constitute a material change of use by itself. Rather it needs to be judged whether the intensification (i.e., the increase in caravans) materially changes the character of the use of the land (*Reed v Secretary of State for Communities and Local Government* [2014] EWCA Civ 241; *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1473).

Following the *Regina (oao John Childs) v First Secretary of State and Test Valley Council* EWHC [2005] 2368 case law (paragraph 9), constituent parts of intensification which the Inspector considered can include:

1. Appearance of the site within the wider landscape including urbanisation and level of permanence;
2. Impact on visual amenity of the area;
3. The activity taking place on the land including residential paraphernalia;
4. The traffic generated by the use both in terms of numbers of vehicles and patterns of movement; and
5. Effect on the immediately surrounding roads.

It is necessary to consider whether there would be any adverse planning consequences resulting from the proposed intensification of the existing use and whether they would be of such magnitude to amount to a material change of use of the land. This is not a judgement of merit but of materiality.

As there is no condition restricting the number of caravans that could theoretically be sited on the land, the lawful number is unlimited in planning terms. Therefore, there could be no ‘increase’ that would automatically lead to a material change of character, and thus a material change of use, as there is no ‘base figure’ against which such a change might be assessed.

- 1) **Impact on appearance of the site within the wider landscape including urbanisation and level of permanence:**

The application site is located outside of settlement limits within the countryside. The surrounding area has a general verdant character with some sparse residential development located in proximity to the site. Agricultural fields lie to the north and west, with woodland to the east and detached houses on large tree-lined plots.

There are hedges along the boundaries of the site with mature trees, particularly on the eastern and southern boundaries. The site itself is devoid of trees and is covered by grass with a wide tarmac road in the centre. The aerial photograph below shows the existing character of the site and the pattern of development in the immediate surrounding area which is predominantly characterised by large, detached dwellings set in large plots.



Aerial image dated 2022 (application site outlined in red)



Site visit photos 13.01.2025

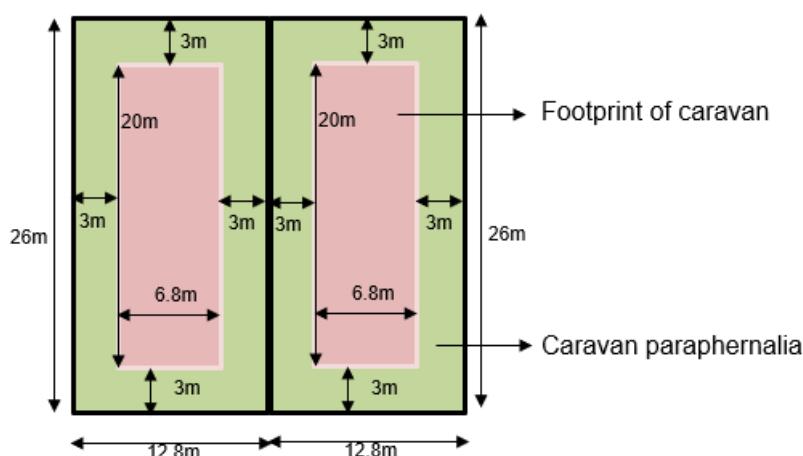
The photographs above show the views of the site from publicly accessible roads.

The current layout comprises twelve caravans with no delineation between them and limited paraphernalia associated with them. Six of the existing caravans also benefit from raised decking areas. Alongside the caravans are the existing disused agricultural buildings. The existing views of the site, especially from the south, east and west, are relatively well screened and the caravans can only be seen where the vegetation is sparse.

The Officer report of 232111 stated that "*The site is well screened by mature hedging and existing vegetation and 6 mobile homes will not have detrimental impact on the visual amenity due to their limited scale*". This remains the case.

The site is of a substantial size that can in physical terms comfortably accommodate 3 additional caravans. The additional caravans would be sited within the parts of the site where the disused agricultural buildings are currently in situ. While the caravans would be sited in a more visible part of the site, towards the northern boundary of the site adjacent to the junction of Part Lane and Benham Lane, the appearance of the site as a whole is of a residential caravan site and this would continue following the intensification. There is no additional infrastructure required as the driveway already exists on the site, reducing the urbanising impact of the 3 additional caravans.

To an observer, the existing caravans appear as buildings as they have the appearance or permanence with brick plinths, timber cladding and tiled roofs albeit they fall within the definition of a caravan and the addition of 3 caravans would not change this perception. No information has been submitted as to the proposed caravans except for an indicative site plan. The maximum legal footprint of a caravan, as defined by the Caravan Sites and Control of Development Act 1968 (as amended) is 20m x 6.8m (136sqm). The minimum separation distance between 2 caravans is 6m. As such, as per the existing layout of the site, there would be a minimum gap of 3m on all sides to maintain the legal separation (see diagram below).



The balance of developed land to open area on the site would be further reduced by the additional 3 caravans. Nonetheless, it would remain a reasonably spacious site particularly in the context that the additional caravans would be sited within an area of the site where there is existing built form. There are no internal subdivisions of the site where the existing caravans are sited and although these could be established to

create gardens, this would not significantly transform the appearance of the land significantly.

Overall, while the introduction of an additional 3 residential caravans on the site would have an impact on the open spaciousness of the site, which is an important characteristic of the surrounding rural area, the 15 caravans together would still appear relatively spacious within the large site which is characterised by the existing caravans in situ. The proposal would also be largely sited where there are currently disused agricultural buildings, while urbanisation would be limited as no additional infrastructure would be required. As such, the increased density would not result in a material change in character of the existing use of the site.

2) Impact on visual amenity of the area:

The submitted covering letter states that the caravans are to be used as "*a main or sole permanent residence*". On this basis they would be permanent fixtures in this location and there is no intention to remove them. The nature of the proposal is the same as what was considered under the previous Certificate applications in this respect.

The caravans currently sited are visually prominent, and their residential nature and use dominates the site's overall character as discussed above. It is accepted that the appearance of the site will change as there would be more structures on the land and more general paraphernalia associated with day to day living present. However, there is no evidence to demonstrate that the current character of a residential caravan site would change with additional caravans. Ultimately, the additional caravans would be viewed in the context of the existing.

The character of the site changed prior to the 2024 Certificate with the introduction of six caravans including a tarmac road with kerbstones, external bollard lighting and fencing. The access road, parking and associated safety paraphernalia such as lighting on the site are likely to be permitted development under Schedule 2, Part 5, Class B of the General Permitted Development (England) Order 2015 (as amended), as they are likely conditions of the site licence. Nonetheless, the addition of 3 caravans is not likely to lead to further significant ancillary development as this is already in situ.

The disused agricultural buildings have a footprint of approximately 287sqm (excluding the Dutch barn which is built on stilts). These structures, particularly the Dutch barn, are highly visible from the public realm and appear distinct from the existing caravans. Individually, the caravans would be of a limited scale (maximum internal height of 3.05m) in comparison to the structures they would replace. The additional 3 caravans would not have a significant impact on the visual amenity of the area in the context of the prominent, dilapidated structures they would replace as well as the site's character being dominated by its existing use for the siting of residential caravans.

While the proposed caravans would be sited in a more prominent location, in closer proximity to the junction, they would still be screened to a degree by the existing boundary treatment. The proposal would also not appear isolated not just owing to

the existing caravans on the site, but due to the site's location within a cluster of residential development within the countryside.

Overall, the introduction of 3 additional caravans on the site would not have a significant impact on the visual amenity of the area, with no change in the character of the existing use of the land in this respect.

3) Intensification of activity on the site including residential paraphernalia:

The site is currently used for the stationing of 12 residential caravans, although it is not known if all 12 caravans are currently occupied, along with remnants of previous agricultural use which are to be demolished to accommodate the proposal. It is accepted that there would be an increase in the level of activities as a result of the proposal due the additional number of people that could live permanently on the site.

The current proposed scheme would require a greater number of vehicles as well as associated residential paraphernalia. Additional ancillary residential activities on the site would intensify since necessary services, deliveries and number of visitors would increase. However, in the context of the 12 existing caravans on the site which could be fully occupied at any time, the addition of 3 fully occupied caravans would not result in an intensification of activity that would change the character of the use of the land as an established residential caravan site within a rural area.

The site is no longer an open field and is a developed residential caravan site and has an established character associated with this use. As a matter of fact and degree, the siting of 15 caravans in total would result in an intensification of activity but this would not amount to a material change of use as the land would retain the same character of use.

4) Impact on traffic and parking provision:

Although the site is situated within a cluster of residential development, it is located outside of settlement boundaries within designated countryside and is an unsustainable location. There would be a considerable increase in activity on and associated with the siting of 3 additional caravans, particularly with regard to vehicular movements and vehicle parking. More areas of the site would have to be used for vehicle parking, access and other activities associated with their residential use. The site benefits from an existing access road and there are areas of hardstanding fronting the caravans for car parking.

Under this type of application, parking provision for the additional caravans does not have to be fully demonstrated. However, it is noted that the submitted indicative site layout plan shows area of hardstanding to the front/side of the proposed caravans, as per the existing arrangement for car parking on the site.

The number of trips to and from the site would increase following the introduction of more permanent residents, with required travel to work, school and other day-to-day activities. As a result, there would be a change in the traffic movement within the site itself as well as to and from the site. However, comings and goings to and from the site is the type of activity that would be expected for an established residential

caravan site, and the additional movements generated by 3 more caravans is not considered to materially change the character of the site.

It is also noted that activity in terms of visitors or vehicle movements could change whether or not any additional caravans are introduced; and similarly noise could also increase. Therefore, the addition of 3 caravans is not considered to materially change the character of the site in these respects.

Overall, additional traffic movements and parking requirements of the site be greater than the lawful use for 12 caravans but not to such extent that it would materially affect the use of the site as a residential caravan site.

5) Impact on highway safety:

Although the site is located in an unsustainable location, the siting of 3 additional caravans would not result in additional traffic to an extent that would have a harmful impact on the highway network and safety. The site benefits from 2 accesses – one from Part Lane which is currently not used and the other from Benham Lane. Both Part Lane and Benham Lane serve multiple properties and can accommodate additional traffic movement. As such, the proposal would not materially alter the existing use of the road and would not have a negative impact on highway safety.

6) Other:

Two representations have been received from the Parish Council and a local resident objecting to the proposal on various grounds including the above five considerations. While these representations have been noted, they primarily relate to planning issues. Lawful development certificates are determined as matters of fact and legal considerations, and the planning merits of the proposal are not for consideration.

The applicant cites significant case law and appeal decisions in their submitted covering letter. While these are noted, the determination of this case is not a matter of planning judgement but a matter of materiality based on the facts of the case and cannot therefore be compared to other cases with different facts, context or character.

Caravan or building?

The application needs to be assessed against the relevant planning legislation to determine whether the proposed mobile homes would either amount to operational development would constitute a material change of use, or both.

Limited information has been provided to determine whether the proposed caravans comply with the statutory definition of a caravan. As with any Certificate of Lawfulness application, the burden of proof is on the applicant and the Local Planning Authority is required to test the evidence on the balance of probability.

Conclusion:

The proposal must be considered in the context of the current character of the use of the site, which has changed over time from an open field to a rural residential

caravan site, and the level of activity associated with the siting of up to 12 caravans for residential purposes which is the lawful use of the land.

There would be the likelihood of associated infrastructure and residential paraphernalia associated with the additional residential caravans, such as driveways, cars, porches, external stores, garden furniture and waste disposal facilities. There might also be internal subdivisions introduced within the site to establish individual gardens. However, both the main infrastructure required for a caravan site and the associated residential paraphernalia are already present on the site, and the likely increase in paraphernalia would be fairly limited.

There would also be a small increase in activity associated with the additional caravans including vehicular movements. However, this would not be sufficient to transform the appearance of the land which, within its surroundings, is one of a typical spacious residential caravan site with contextual sympathy in terms of their design and appearance in a rural environment.

It is a fact that the proposed number of caravans will increase the existing level of activities and the visual impact of the site as a whole on the environment, but this alone will not result in a material change of use. The relevant factors include the level of activity, level of permanence, greater visual prominence, greater amount of residential paraphernalia, urbanisation, increased vehicular movements and effect on the neighbouring uses and the locality. Upon assessing all of these factors, it is considered that the introduction of three additional residential caravans would result in the "mere intensification" of the existing use of the site, rather than a material change of the character of the use of the land which results in a material change of use.

The proposed use of the land for the siting of 15 caravans would, as a matter of fact and degree, not result in a material change in the definable character of the land and its use when compared with the actual existing lawful use (siting of 12 caravans). As such, the proposal would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended).

Based on the information submitted, it is not known whether the mobile homes would fall within the definition of and size restrictions for a caravan under the relevant legislation. No information has been provided to establish that the structures would not be fixed to the ground, and that the proposal would not result in operational development. However, if the structures to be sited on the land do not fall within the definition of caravans, this would be a separate enforcement matter following the implementation of the proposed Certificate.

It is therefore recommended that the application for a Lawful Development Certificate be **approved**.



DRAFT APPROVED
Development Management Team Leader

Date: 31 March 2025