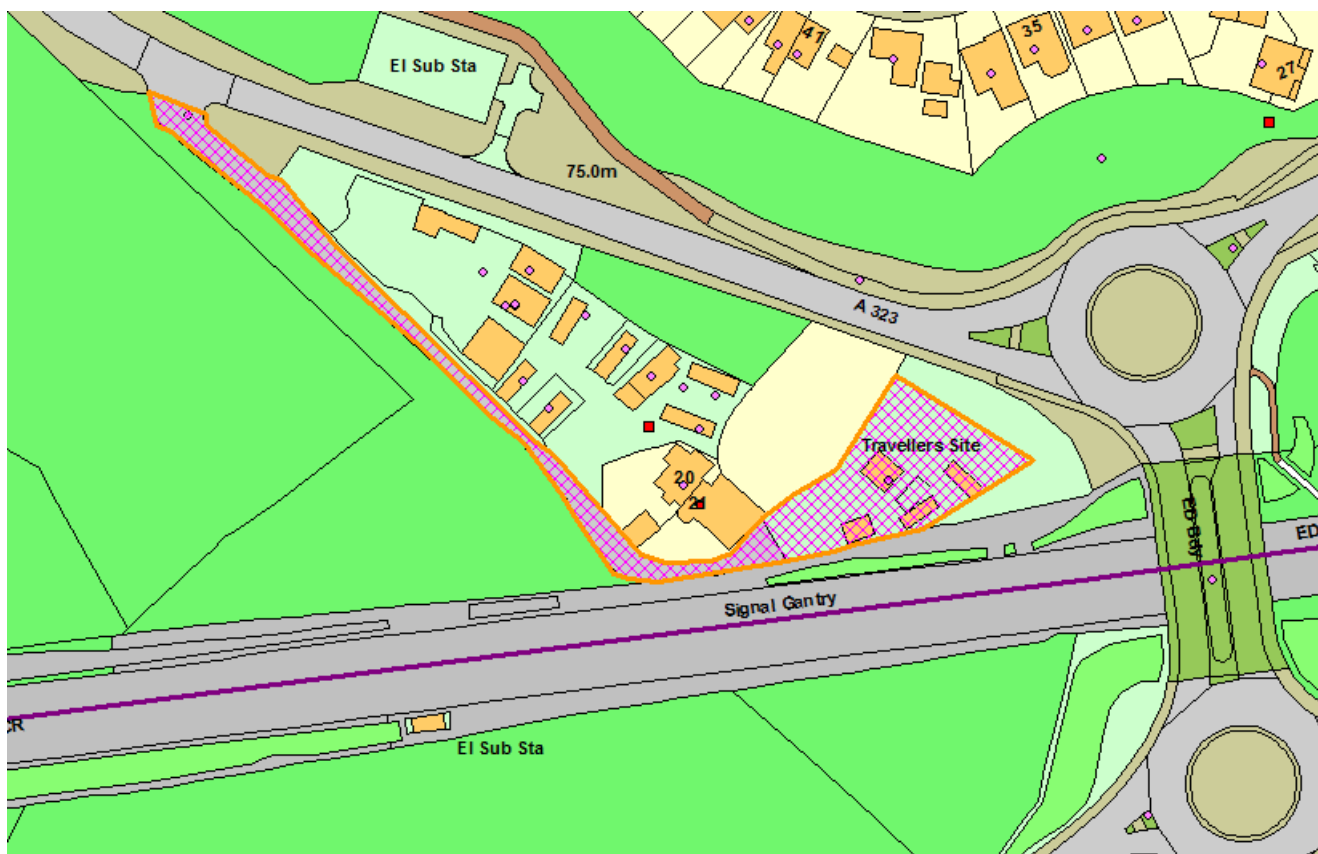


**COMMITTEE REPORT  
ITEM NUMBER:**

APPLICATION NO. 22/02181/LDC  
LOCATION **21 Elvetham Bridge Fleet Hampshire GU51 1AF**  
PROPOSAL Change of use of land for the siting of four mobile homes  
APPLICANT Mr Robert Black  
CONSULTATIONS EXPIRY 4 November 2022  
APPLICATION EXPIRY 8 December 2022  
WARD Fleet West  
RECOMMENDATION **Refuse**



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## **BACKGROUND**

The application is brought before Planning Committee as the agent is a District Councillor.

## **DESCRIPTION OF THE SITE**

The application site is located to the south of the A323 Fleet to Hartley Wintney Road.

To the west of the site the dwellings known as 20 and 21 Elvetham Bridge, a caravan site (which includes 6 caravans) following the granting of a lawful development certificate (reference 08/00964/LDCEX) and commercial units.

## **PROPOSAL**

The application seeks a Lawful Development Certificate (LDC) for an Existing Use or Operation comprising the use of land for the siting of four mobile homes for residential purposes. The application seeks the LDC on the grounds that the use began more than 10 years before the date of this application.

## **RELEVANT PLANNING HISTORY**

08/00964/LDCEX - Application for a certificate of lawful development for existing use of land as a caravan site. Certificate Issued 20.06.2008.

## **CONSULTEE RESPONSES**

None received.

## **NEIGHBOUR COMMENTS**

None received.

## **CONSIDERATIONS**

## **LEGISLATIVE BACKGROUND**

Section 171B of the Town and Country Planning Act 1990 (as amended) confirms that:

- (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 four years beginning with the date on which the operations were substantially completed.
- (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 four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period 10 years beginning with the date of the breach.

In order to allow the Local Planning Authority to issue a lawful development certificate it is therefore necessary for the applicant to demonstrate that four mobile homes have been situated on the site and used for residential purposes for a period in excess of 10 years from the date this application was submitted.

## ONUS OF PROOF

The onus of proof in a Lawful Development Certificate (LDC) application is firmly on the applicant. This is confirmed within the Planning Practice Guidance (PPG) which outlines: 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. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence. (Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014).

In the case of applications for existing use, if a Local Planning Authority (LPA) has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than 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.

Section 191 of the Town and Country Planning Act 1990 states that in assessing this balance of probability, "if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records available, they need not go to great lengths to show that the use specified in the application is or is not lawful. While LPAs are statutorily required to maintain the planning register, this is not a complete record of the planning status of all land in their area. In many cases, the applicant for a certificate will be best placed to produce information about the present, and any previous, activities taking place on the land, including a copy of any planning permission they may hold.

The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful; it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful.

The Planning Practice Guidance clarifies:

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

(Paragraph: 005 Reference ID: 17c-005-20140306 Revision date: 06 03 2014)

The Courts have held that the relevant test of evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Courts have held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no

evidence of their own, or from others, to contradict or otherwise make the Applicant's version of events less than 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".

The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application. Evidence is very often submitted in the form of Affidavits or Statutory Declarations with supporting documentation exhibited and annexed.

## **EVIDENCE SUBMITTED**

The Applicant presented the following with their application as evidence:

- Supporting statement and four photographs

## **ASSESSMENT OF EVIDENCE SUBMITTED**

No Statutory Declarations have been submitted with the application. The supporting statement completed by the agent makes no reference to the number of caravans on the site. It states that the agent visited the site some 20 years ago and recalls there being some mobile homes on site. Four photographs have also been submitted showing some structures and two vehicles. The photographs are not date stamped and it is not clear where they have been taken from. Furthermore, the Location and Site Plans do not indicate where precisely the caravans are located within the site.

It is not disputed that caravans have been on the wider site since 1997 (as discussed within the Officers report for 08/00964/LDCEX). Within the Officers report it was noted that there were six caravans on site and a workshop building.

### Siting of the mobile homes

At the time of the Officer site visit the four caravans that are the subject of the application were witnessed in the area contained within the red line of the application site. From reviewing aerial imagery dating back to 1999 it can be seen that there are some structures on the site, however it cannot be established whether these structures are caravans (or other residential paraphernalia), how many structures there are, or if they are the caravans referred to within this submission as their precise locations have not been indicated on the submitted plans. Aerial imagery can be part of an evidence package however cannot alone confirm continuity of use or siting of caravans for a continuous period as such images are a snapshot in time.

### Use of mobile homes for residential purposes

It is noted that on the Valuation Office Agency's website since 2009, units 2, 3, 4, 6 and 7 have been registered on the residential listings, however these appear to relate to the units as part of application 08/00964/LDCEX. There are no Council Tax records relating to the four mobile homes the subject of this application.

The applicant has not provided satisfactory evidence to demonstrate that four caravans have been sited on the land and been continuously occupied for residential purposes for the last 10 years. The applicant's evidence is not particularly detailed, nor is it supported by any

corroborating paperwork, such as utility bills, bank statements, dated photographs, witness statements (for example from current or previous tenants) or Statutory Declarations. The Council considers that there is insufficient evidence submitted with the application to enable a conclusion that the development is lawful; this being the siting of four mobile homes and the continued use of the mobile homes for residential purposes during the requisite period of at least 10 years.

In respect of the relevant test, the balance of probability, it is considered that insufficient evidence has been provided to prove that the mobile homes have been sited on the land and been continuously occupied for residential purposes for the last 10 years.

## **CONCLUSION**

The Council is not satisfied that, on the balance of probability, the evidence submitted proves that four caravans at the subject site have been continuously used for residential purposes for at least ten years prior to the date of the application. As such the time limit set out in section 171B(3) of the Town and Country Planning Act 1990 has not been demonstrated to have been passed.

Accordingly, it is recommended that the Lawful Development Certificate be refused.

## **RECOMMENDATION – REFUSE TO GRANT CERTIFICATE**

- 1 The evidence submitted with the application and other evidence available to the Local Planning Authority is not considered to be sufficiently precise or unambiguous to enable the Local Planning Authority to establish that, on the balance of probability, the land to the east of 21 Elvetham Bridge has been used for the siting of four caravans and has been occupied for residential purposes for a continuous 10-year period before the date of the application.

In these circumstances it is not possible for the Local Planning Authority to grant any certificate under the terms of section 191 of the Planning Act to confirm that the use is lawful due to the passage of time and immune from enforcement action.

## **INFORMATIVES**

- 1 The Council works positively and proactively on development proposals to deliver sustainable development in accordance with the NPPF. In this instance: The application was determined on the basis of the information provided and on other information available to the local planning authority. It is important to note that the information was inadequate to show continuous use for the requisite period does not preclude the applicants from a further application, containing additional evidence.