

Development Management Delegated Decision Report

B/20/0215



SUMMARY OF APPLICATION			
Application Reference	B/20/0215		
Application Type	Certificate of Lawfulness (existing use)		
Proposal	Application for a Lawful Development Certificate to confirm that the siting of a static caravan for purposes ancillary to the pig farm use (not for residential purposes) is lawful		
Location	The Caravan, Oak Farm, Cut End Road, Fishtoft, Boston, PE21 0SN		
Applicant	Mr John Paul Oakton		
Agent	N/A		
Received Date:	26-Jun-2020	Consultation Expiry Date:	30-Sep-2020
Valid Date:	25-Aug-2020	Statutory Expiry Date:	20-Oct-2020
Date of Site Visit:	09-Sep-2020	Extension of Time Date:	N/A
Objections received?	Yes		
5 day notification record:			
Councillors notified	Date	Response received – date	Ok to continue
Councillor Noble	07-Oct-20	Happy to be delegated decision – 07/10/20	Ok
Councillor P Skinner	07-Oct-20	No response	Ok
Councillor J Skinner	07-Oct-20	Not happy with the application and wished to discuss – 08/10/20 Following a discussion with Mike Gildersleeves and voicing their concerns they are now happy for the decision to be delegated – 15/10/20	Ok
Recommendation	ISSUE Lawful Development Certificate		
Report by:	Grant Fixter		
Date:	06/10/2020		

OFFICER REPORT

SITE AND SURROUNDINGS:

The application site is part of an agricultural holding covering 1.3 hectares. The land is flat and is bound to the southwest by Cut End Road.



Hobhole Drain is to the east with a ménage and equestrian use to the north. There are a small number of dwellings on the opposite side of Cut End Road facing the application site.

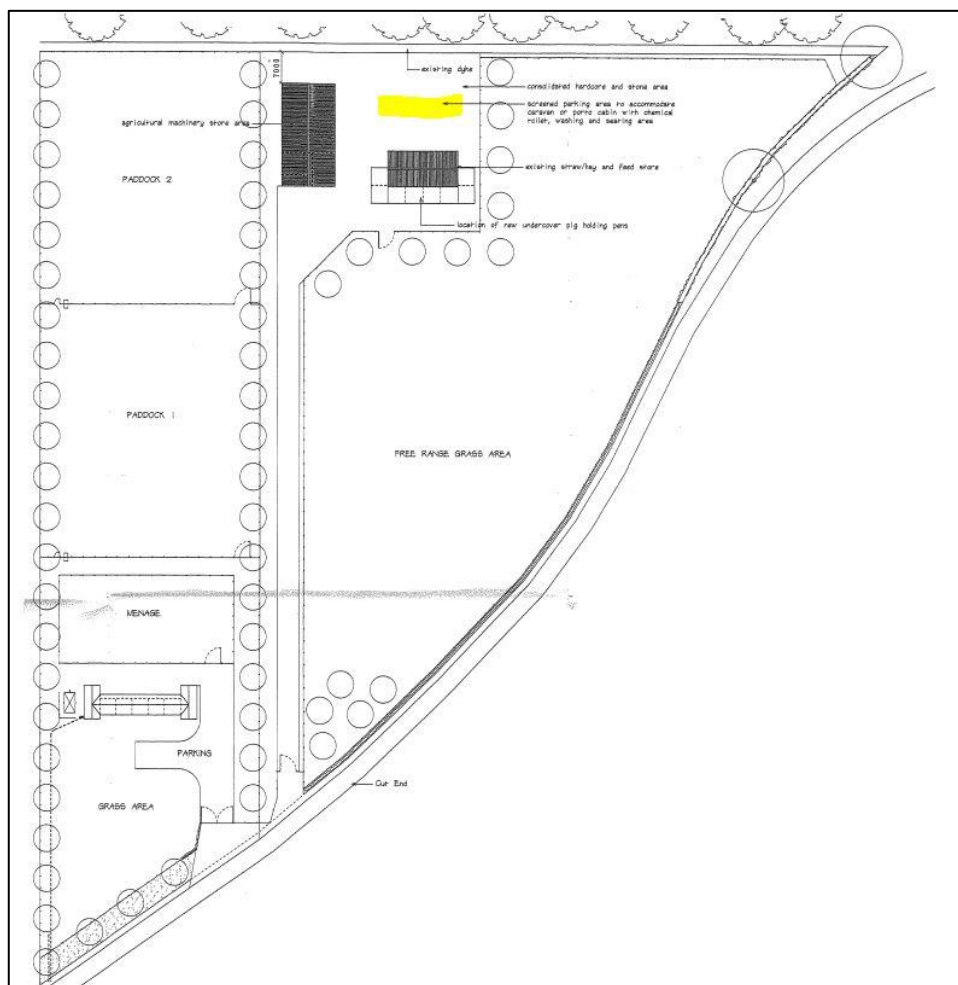
DETAILS OF PROPOSAL:

This application seeks a Lawful Development Certificate to confirm that the siting of a static caravan for purposes ancillary to the pig farm use (not for residential purposes) is lawful.

As part of the application, the applicant has submitted Drawing 'TS.OFPF.2016.01' (Site Layout Plan). This is essentially the plan which was approved as part of the B/16/0414 approval yet is highlighted to show the extent of the pig farm and a red box to outline the siting of the caravan.

RELEVANT HISTORY:

- B/20/0098 - Erection of a single storey extension attached to existing straw/hay and feed store comprising eight pig pens – Approved on 30/04/2020;
- B/18/0271 - Residential use of static caravan for 5 years while developing a free range pig farm – Refused on 29/08/2018;
- B/16/0414 - Construction of 1no. agricultural building to provide 6no. pig holding pens and storage of agricultural machinery, 1no. agricultural building to provide a store for straw, hay and feed plus hardstanding area to serve proposed free range pig business – Approved on 19/12/2016.



The above plan is an extract from the Site Plan approved under B/20/0098 which shows the two agricultural buildings and extension. The highlighted yellow is the approximate area of the static caravan for this Lawful Development Certificate.

RELEVANT LEGISLATION:

The Town and Country Planning Act (1990)

- Section 191 – Certificate of lawfulness of existing use or development;
- Section 55 – Meaning of “development” and “new development”.

Caravan Sites Act (1968)

- Part III (Miscellaneous)

CONSULTATION RESPONSES:

Witham Fourth Internal Drainage Board

Provided comments to say the Board’s consent is required to discharge both surface water and treated water to a watercourse, in addition to stating the need to contact the Board should current surface water and treated water disposal arrangements change.

Fishtoft Parish Council

The Parish Council object to this proposal on the following grounds:

- There is already a caravan on this site with no permission for it to be residential
- It is outside of the local plan for residential which was the case when the land was purchased
- A sensible & logical step for the management of the farm with little impact
- Object to this application as this is agricultural land & is not included in the local plan
- Would not want the decision to impact on the animals welfare
- No great issues other than the risk of flooding
- Object to it being for residential purposes as the area is at risk of flooding and it was not included in the Local Plan.

In response to the points raised, it is worthy of noting this application is for a Lawful Development Certificate under Section 191 of The Town and Country Planning Act to prove the siting of a static caravan for purposes ancillary to the pig farm use (not for residential purposes) is lawful.

The use of the caravan for residential purposes and the relevant legislation, guidance and materiality tests are outlined below in the Evaluation section of this report.

Environment Agency

Have no objections.

Lincolnshire County Council

Local Highway and Lead Local Flood Authority have no objections.

THIRD PARTY REPRESENTATIONS RECEIVED:

Three third party representations were received comprising one objection and two letters of support for the application.

The occupiers of 1 Coronation Cottage, Cut End Road, Fishtoft object to the application on the following grounds:

- The caravan and the whole site looks like an eyesore;
- There are two caravans in addition to the one in questions that were not there a year ago;
- Generator that kicks in every night;
- Attempts to tidy the site have not worked and it still looks like an eyesore which smells and is opposite to residential properties;
- Caravan should not be there and not lived in as it has been since day one (2016);
- Human waste should be disposed of by a chemical industrial toilet but cannot see one so waste must be going directly into the environment;
- Development is not managed;
- Strongly object to the caravan being there let alone lived in.

In response to the points raised by the objector, it is worthy of noting this application is for a Lawful Development Certificate under Section 191 of The Town and Country Planning Act to prove the siting of a static caravan for purposes ancillary to the pig farm use (not for residential purposes) is lawful.

Upon the site visit on 09/09/2020, it was noted that only one caravan was on site.

Points, therefore, relating to the number of caravans, the appearance of both the caravan and site, generator, smell, how waste is disposed of and the management of the development are not material planning considerations for this particular application.

Points, however, relating to the residential use of the caravan are material planning considerations for the proposal.

The occupiers of Laurel Farm and 2 Coronation Cottages submitted letters of support for the application stating:

- House overlooks Oak Farm and have enjoyed watching it advance;
- Adds diversity to the landscape and rural economy;
- Notice members of public stopping to look at the pigs;
- Only get loud when its near feeding time;
- Never any bad smells or loud noises to report;
- Lovely little mobile home onsite for them to live in temporarily and for livestock's safety;
- Adds to local property value and enriches the village;
- Before pig farm was built they were against the idea but more research made them relaxed about that matter;
- Owners working all the time to improve the running and look of space;
- Contests the objectors points and states:
 - Can only see one static home and not 3 caravans;
 - Never had real noise disturbance from the generator;
 - Only noticed smell emitting from the site once and that was during a hot day when fruit was rotting on the field. Also believes smell the objector is smelling is from the nearby poultry farm;
 - Does not understand how the objector can know whether the applicant has been living in the caravan since day one;
 - Never noticed smell of human waste coming from Oak Farm.

EVALUATION:

An application for a Lawful Development Certificate for an existing use (S.191) is not a planning application in the normal sense in that the planning merits and assessment against the Development Plan are not relevant.

Basically, the question to be asked is whether the development is lawful without needing any further permission. A development is 'lawful' if no enforcement action may be taken by the authority and are matters of fact and degree which are evidenced based. Occasionally, applications of this nature are submitted for works that do not constitute development, which is the case with this proposal.

Section 191 of the Act indicates that the burden of proof lies with the applicant. The relevant test is 'the balance of probability' and Local Planning Authorities are advised that if they 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 applicants' version is precise and unambiguous to justify the grant of a certificate.

This section also indicates that 'if on an application under this section, the LPA 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 the application, they should issue a certificate to that effect; and in any other case they shall refuse the application'.

The static caravan has been the subject of lengthy correspondence between the Council and applicant. The applicant's position has been that they can site a caravan as shown on the plans submitted with this application. The Council do not dispute this, but what they do dispute is the use of the caravan and what is actually permitted. Planning application B/18/0271 for the residential use of the caravan was refused in 2018. Since that application, the caravan has been subject to enforcement discussions as the Council believe the way it is used at present is not lawful and lengthy discussions were had before the application could be validated.

The level of detail specified in a lawful development certificate needs to be such that any future material change of use may be established therefrom, and Sec.191 of the 1990 Act specifically requires the citation of a UCO use class, where appropriate, of any development deemed lawful. As such it is considered that the description of this application is clear and unambiguous. The description clearly states the siting of a caravan on the site is for ancillary purposes to the pig farm and not for residential purposes.

What is development?

Section 55 of the Town and Country Planning Act (1990 Act) in respect of the meaning of development states:

“...Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “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 clarification the other provisions within Section 55 are not pertinent in this case to the definition of development. There is no specific mention of a caravan or control of caravan sites in the 1990 Act. Therefore the basis for planning permission being required rests

on sec.55(1) where it is stated that “the making of any material change in the use of any building or other land” is development. Therefore, a conventional caravan is not operational development because of its mobility, and for the purposes of sec.55 has the status of a chattel and is thus a use of the land on which it is stationed.

What is a material change of use?

National Planning Practice Guidance (PPG) on ‘When is permission required’, confirms at paragraph 011 that:

"A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case."

The basic tests for materiality are founded on early court decisions, as not every change will be material (meaning material for planning purposes). *Palsar vs Grinling in 1948* is often cited, where it was determined that for a material change of use to have occurred, the new activity needs to be substantially different to that before. The two main tests for the materiality of a change of use that have since emerged are:

- Change in the character of the use itself, including the land it is sited;
- Effects of the change upon the neighboring uses and the locality.

R (Kensington and Chelsea) v SSCLG & others 2016 helpfully outlines the principles applied when deciding whether a change of use is material:

- (1) A planning purpose is one which relates to the character of the use of land;
- (2) Whether there would be a material change in the use of land or buildings falling within the definition of “development” in section 55 of the TCPA 1990 depends upon whether there would be a change in the character of the use of the land;
- (3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use, such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;
- (4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;
- (5) The issues of (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;
- (6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.

From the above, it is abundantly clear that should the caravan be used for residential purposes this would create a new planning unit as a dwelling and in turn constitutes a material change of use.

How is the development lawful?

The caravan in question falls under the dimensions specified within the 1960 Caravan Sites and Control of Development Act amended under the Caravan Sites Act 1968 and is, therefore, not deemed as OPERATIONAL development in relation to Section 55 of the Town and Country Planning Act.

The key consideration for this application, therefore, is the use of the caravan and the land upon it is sited.

Drawing number 'TS.OFPF.2016.01' (Site Layout Plan) has been submitted as part of this application, as this demonstrates the layout for the application which was approved on 19/12/2016 (B/16/0414). It is evidently clear on the submitted plan that an area is marked which states it will be occupied by a caravan. So as previously stated, it is not the caravan itself which is under question, but rather the use of the caravan and the land upon it is sited.

If the caravan is used for residential purposes, this constitutes a new planning unit and when referring to the legislation, guidance and materiality tests outlined above, this would for a material change of use and, therefore, would not be lawful.

If the caravan is to be used incidentally or ancillary to the primary use of the site, for example, as a welfare building, this would not be deemed a material change of use of the land. In addition, the caravan would not be classed as development.

It is, therefore, argued that if the caravan is to be used in accordance with what this Lawful Development Certificate seeks (use that is ancillary to the pig farm and NOT residential purposes), this would not be classed as a material change of use of the land and as no operational development would be occurring, the activity as described would be lawful.

CONCLUSION:

The main consideration here is not the caravan itself, but rather the use of the caravan.

At present, it is the Council's view the applicant is using the caravan for residential purposes and this has been the subject of lengthy correspondence and discussions between the Council and applicant. If the caravan is being used as residential accommodation, it has been established this would constitute a material change in use of the land and creates a new planning unit as a dwelling. It could be viewed that as this would be occupied in connection with the main use of the site that it constitutes an agricultural workers dwelling. It is worth noting that an application was submitted for the residential use of the static caravan for 5 years while developing a free range pig farm and this was refused on 29/08/2018.

The Lawful Development Certificate, however, is for the caravan to be used for purposes ancillary to the pig farm and not for residential purposes.

According to the submitted details, the proposed works fall within the definition of a caravan and do not constitute development as long as the caravan is used for purposes ancillary to the pig farm and not for residential purposes. Should the use of the caravan be for residential purposes then this would introduce additional planning considerations and would be viewed upon negatively.

The Council is, therefore, satisfied that no planning application is required for such a scheme and under the provisions of S.191 of the Planning Act 1990, the proposed works are considered lawful for planning purposes.

RECOMMENDATION:

It is recommended a Lawful Development Certificate be issued.

INFORMATIVES / NOTES TO BE INCLUDED ON/WITH DECISION NOTICE
<p><u>First schedule</u></p> <p>Land identified in Site Location Plan and TS.OFPF.2016.01 – Site Layout Plan</p> <p><u>Second schedule</u></p> <p>That the siting of a static caravan for purposes ancillary to the pig farm use (not for residential purposes) does not constitute development under S55 of the Act, and therefore under the provisions of S.191 of the Planning Act 1990, the proposed works are considered lawful for planning purposes.</p>
<p><u>STATEMENT OF PROACTIVE WORKING:</u></p> <p>In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2019 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.</p>