

This planning supporting statement accompanies an application for a proposed use of land, the application is accompanied by this supporting statement, the site location plan and for the reasons set out within the statement it is submitted that the use of the land as proposed would be lawful.

The application under Section 192 falls to be considered against the context of lawfulness. Lawfulness is identified by the 1990 Act as follows:

192 Certificate 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.*
- (3) A certificate under this section shall—
 - (a) specify the land to which it relates;*
 - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*
 - (c) give the reasons for determining the use or operations to be lawful; and*
 - (d) specify the date of the application for the certificate.**
- (4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness*

The planning merits of a Certificate of Lawfulness are not relevant and, as such, whether planning permission would, or would not be granted is not discussed in this Statement.

Site History

The land which is the subject of this application has been used by the same family since the 1900s. The site has been the home and base of the Abbott family since the 1950s. Members of the family have lived on the site, stored equipment in connection with the family business of Fairground and Show Equipment, undertaken external storage and provided accommodation for non-family members in caravans.

The site has been described as a 'Travelling Show Person's site' in the past and whilst much of the equipment which is stored on the site is used in connection with Travelling Fairgrounds, a Show Person's Site or a site of Show Person's Equipment are not terms which are legally defined. The broad description is not in itself accurate in identifying the lawful use of the land.

Planning Unit

In an enforcement in Section 191/192 assessment a useful starting point is often the identification of a planning unit. The expression planning unit is not legally defined, but in *Burdle & Williams v SSE & New Forest RDC [1972]* three propositions for the identification of a planning unit were set out.

These three propositions are;

(1) Where there is a single main purpose in any use of land (with any secondary activities limited to activities ancillary to that main purpose) the planning unit is the whole unit of occupation for that use;

(2) Where there is a composite (or mixed) use, with more than one activity each varying in intensity over different parts of the same land, it is necessary to consider the entire unit of occupation for the composite use as the planning unit;

(3) Where there is a single unit of occupation, but with two or more physically separate or distinct areas each occupied for substantially different or unrelated purposes, each of these areas ought to be considered as a separate planning unit.

The uses which have been undertaken on this site include caravans, which have been occupied as the main place of residence by the occupiers of the site, storage of fairground equipment including transportable attractions and catering vans and storage of touring caravans. The site is all within one single ownership and managed as one operation. The separate functions contribute to the mixed use of the single planning unit. The circumstances of the site fall within the second proposition of *Burdle*.

As a result of the site not changing hands and with limited exceptions there has been limited interest in planning by the site owners, the available records are limited. There have been two relevant submissions to the local planning authority and an appeal for redevelopment of the site. Council tax records also exist for a number of caravans on the site. The site is also recorded with addresses on the Royal Mail and other databases.

Applications under Section 191 and 192 are to be determined on the balance of probability and there is no reasonable case that the existing use of the land has not been used in the manner described for at least ten years. This is not a case which involves a site which is hidden from public views, with no third parties able to see the site. This is a site which is open to public views and given the considerable previous submissions it is reasonable to expect that had there been any noticeable change in the pattern of uses over the last ten years, the local planning authority would have received notification of these events.

In 1997 a planning application was made for *“erection of a four storey block of fifteen self-contained flats with basement car parking for fifteen cars on the northern half of the site and change of use of the southern half to public open space.”*

In the committee report accompanying this application the site was described as:

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1.1 The north and south fairground sites consist of two large open semi-vacant sites on the eastern side of the Vale of Health overlooking the Heath. The south side is vacant and overgrown and is privately owned. The north site is owned by the Abbott family who live on the site in caravans and use it for occasional fairground purposes. At present the north site is used for the storage of numerous caravans, lorries, trailers, kiosks and associated fairground equipment and, as such, has an untidy and semi-derelict appearance. The site is connected to mains electricity and sewerage.

This description from 1997 is not significantly different to how the site could be described today. Paragraph 1.3 of the same report considers the history in more detail, but this history shows that the site has been known to the local planning authority in detail for at least ten years. No enforcement action has been taken by the LPA given the local authority concerns regarding the site its status in the Metropolitan green belt and open space designations it is reasonable to conclude that if there were concerns of the use and that the enforcement action could have been taken, it would have been followed by the local authority before now.

A use can only reasonably be considered to be lawful from the history of the site. What is not agreed upon at this point in time is the interpretation of that use.

An extract of google earth below shows that the pattern of use of the land has been consistent



1999 Google Earth Image

2003 Google Earth Image

2006 Google Earth Image



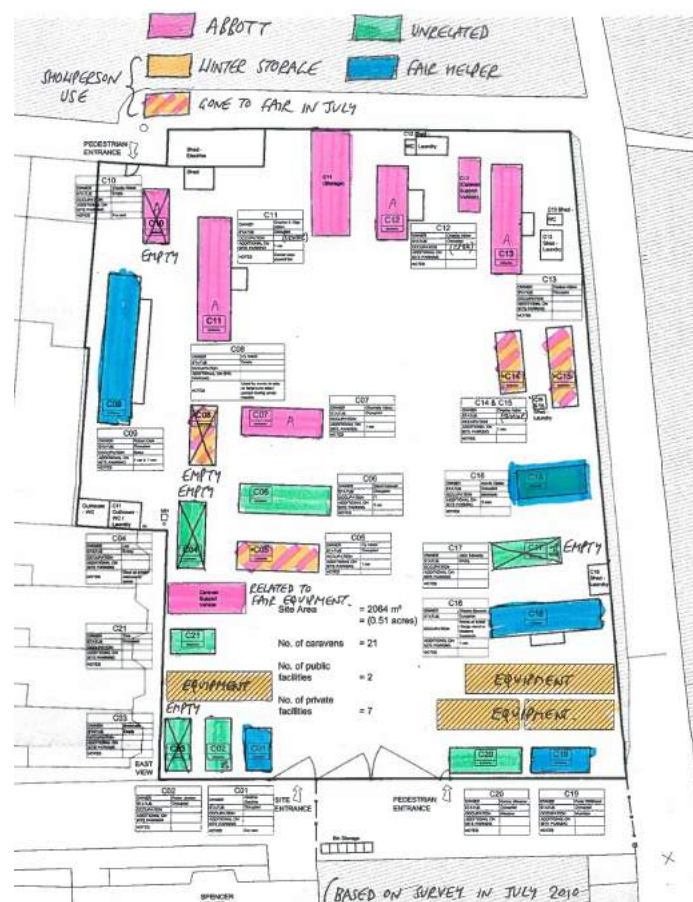
2008 Google Earth Image

2010 Google Earth Image

2015 Google Earth Image

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The Google Earth Images all show a consistent pattern of the use and when the extract from the previous certificate of lawfulness application and the pattern of uses in 2011 is compared with the extract from the previous certificate there is a clear consistency that supports the 2011 survey of uses being accurate and consistent until present. As some of the caravans can be identified on the 2006 aerial photograph it is reasonable to conclude that the 2011 picture is representative of the last ten years use of the site.



The council tax records, photographs, and site history all support an interpretation of a mixed use of 5 to 6 caravans for residential occupation, caravans used for occupation by members of the Abbott Family, storage of caravans, storage of fairground and associated equipment. The site has a mixed use and the test is one of the balance of probabilities or whether the suggestion is more likely than not, given all of the above, it would not be credible for the local planning authority to suggest that the use is not established.

In 2010 an application for a certificate of lawfulness was made for a certificate of lawfulness of an existing use (s191) this described the site as a residential caravan site. This application was withdrawn

but the submissions provide an opportunity for a clear mark in the history of the site to be established. It is also more than reasonable to conclude that at the time of the assessments of the use of the land it was considered that the land use was lawful and there was no basis upon which to take enforcement action.

The LPA identified in consideration of the previous application that the previous use of the land had been a mixed use including a mix of storage of showground equipment and caravans some of which were stored and some of which were used for residential accommodation. The nature and mix of the uses has not changed significantly in the approximately five years since the previous application was considered.

It may well have been the case that the description of the development in the 2010 application which was submitted as an existing use was not an accurate description but that does not prejudice whether it would have been lawful if that use had been submitted as a proposed use where the relevant consideration is whether it would be lawful as opposed to whether the previous uses would be described in that manner.

Showperson's Site – the Statutory Definition

The site has previously been described as being a travelling showperson's site, in August 2015 the Government provided an update to the national guidance in respect of traveller sites, this included a definition of a travelling showperson's site which, although provided in the context of planning policy (and therefore not directly applicable to examining established uses) provided that:

3. *For the purposes of this planning policy, "travelling showpeople" means:*

Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers as defined above.

The sites or pitches are further described as:

4. *For the purposes of this planning policy, "pitch" means a pitch on a "gypsy and traveller" site and "plot" means a pitch on a "travelling showpeople" site (often called a "yard"). This terminology differentiates between residential pitches for "gypsies and travellers" and mixed-use plots for "travelling showpeople", which may / will need to incorporate space or to be split to allow for the storage of equipment.*

The planning policy context of the definition is that a travelling showpersons's site will include a mix of both storage use and caravans used for residential accommodation. What the guidance does not

foresee or account for is a mix of uses where there are also caravans which are occupied by persons who do not meet the definition residing on the site.

The 1960 Act included reference to sites for travelling showmen:

10.-(1) Subject to the provisions of paragraph 13 of this Schedule, a site licence shall not be required for the use of land as a caravan site by a traveling showman who is a member of an organisation of travelling showmen which holds for the time being a certificate granted under this paragraph and who is, at the time, traveling for the purposes of his business or who has taken up winter quarters on the land with his equipment for some period falling between the beginning of October in any year and the end of March in the following year.

The 1960 definition, whilst much narrower than the modern reference again does not foresee a situation where there are unrelated caravans used for residential purposes for much or all of the year.

In the previous certificate of lawfulness, in 2011 the agent for the application identified that seven of the caravans were in use by persons who were not travelling showmen and in proportion to the scale of the site this level of use could not be regarded as being *deminimus*.

Material Change of Use

When considering the application in 2010 the case was described as a site for residential caravans. The application was made as an existing use. Had the application been made as a proposed use the previous uses would have been less critical. Simply because a use may not have been existing for more than ten years, does not mean it would not be lawful to use the land in such a manner, provided that such changes are not material.

As there are, by agreement, no planning permission for the current use, it is not necessary to consider the enforceability of any planning conditions.

The current use of the site consists of three elements. The siting of caravans for the purposes of human habitation (residential caravans), storage of caravans, storage of equipment and vehicles for fairground purposes. Of the residential caravans these have been occupied by a mixture of persons who would meet the policy definition, persons who would not meet the definition of a showperson but have engaged in some employment for the fair such as occasional help or support services and those with no connection to the site in their employment.

The site to which this application relates is not a site which was granted planning permission for a specific land use. A site with planning permission for a 'travelling showperson's site' would be limited by the terms of the permission to that specific activity, whether or not a change of use to a non-showman's site would be a material change of use would be another matter. This site has not been subject to a planning permission and the lawful land use relates to the pattern of previous uses on the site.

Changes to the proportion of these uses would be assessed in the context of a material change of use.

In the context of a material change of use, occupation of a site by a Showperson would not make a difference in characteristics to occupation by a person in any other profession. A person who resides on a site would not live in any different way to a person who was working as a travelling showperson. A travelling showperson may travel to work, but that would be no different from many professions who might travel to work, either for short day periods on a commuting basis or at times for longer periods. Their main residence would still be their home. The references to showperson's in planning history relates to a description and, as much as anything, it relates to the type of vehicles which have been stored, however they would still be vehicles and there would be no material change if any other commercial vehicles were stored or parked on the site.

In *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd [2012] EWHC 277 (Admin)* the approach to considering whether the effects of a change to the characteristics of a site attributable to the change in the level of use or a consequence of operational development changing the capacity of the site were considered. Paragraphs 36 and 37 of the judgement are particularly relevant:

36. *Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as is necessary to constitute a material change of use, the level at which that activity did or could occur without giving rise to a change of use has to be ascertained. It is only what happens above that no doubt not very clearly defined baseline which can contribute to the material change of use. In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.*

37. *I do not doubt that a combination of intensification and other changes in activities can constitute a material change in use; but what could be done without the need for permission would still have to be ascertained. That is how the Inspector approached it. Gas bottle explosions for example would have occurred anyway, as would the use of container lorries and the unsociable hours of the arrival of HGVs outside the site as part of the permitted use. They were not, or largely not, related to the increase in throughput, and so rightly were or largely were excluded from consideration. So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities beyond those which did not require planning permission.*

In the case of the site to which the application relates the occupation of caravans by a significant proportion (as opposed to an insignificant proportion) of residents who are not travelling showpeople is established in the same manner as the occupation of caravans by showpersons and the storage of a small proportion of associated equipment. These uses are established and the lack of enforcement or concern from the LPA since 2011/12 demonstrates that this baseline level is lawful.

Over the years the operation of the site as a base for travelling showpeople has become increasingly less practical. The larger modern machines, coupled with the location of the site has made the continued use of the site for the storage of fairground equipment increasingly difficult and has led to

those members of the family who still travel to work storing the majority of their equipment in rented yards outside central London. The reduction in the storage of fairground or other commercial equipment has decreased over the years and the intention, which is the subject of this application is to reduce the storage of equipment further.

The concept of a material change of use is normally focused on the issue of intensification, in the case of this application the issue for consideration is whether a reduction in the scale of use and the removal of the storage of fairground equipment would result in a material change of use of the land. The removal of the fairground equipment would result in less traffic movements and the removal of large commercial vehicles using the highway network. In terms of off-site impacts there would not be a material change of use of the land.

The visual appearance of the site would be altered through the removal of the commercial vehicles and fairground equipment and whilst visual appearance is ultimately a matter of taste there would be no intensification of the site's use, it would be a tidier or neater appearance but the main characteristic of the site would not be altered. An illustrative example layout is shown below;



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A caravan is broadly defined by the 1960 Act and could include units of a variety of styles from the more contemporary to the more traditional as shown on the tables below, it would be the applicant's intention to look at the more contemporary styles but the applicant would welcome the views of the local authority and interested parties in this regard:



The occupation of the caravans would not be altered as a result of whether the persons were or were not travelling showpersons. The occupation of the caravans would all meet the definition of a caravan from 1960 Act which provides as follows:

A caravan site is defined by the 1960 Act section 1[4] as;

In this Part of this Act the expression “caravan site” means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

With the removal of the storage and fairground equipment the only reasonable description of the site would be a ‘caravan site’ in accordance with the definition of the act. No planning permission is needed for the removal of the fairground equipment and the cessation of this element of the mixed use. The use of the land as a caravan site with twelve caravans would be lawful and a certificate should be issued accordingly.