

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES) RULES 2000**

**RULE 6 STATEMENT OF CASE
of the London Borough of Camden**

APPEAL SITE

North Fairground Site, Vale of Health, London NW3 1AU

APPELLANT

Knightsbridge Parks LLP

SUBJECT OF APPEAL

Appeal against non-determination by London Borough of Camden of a Certificate of Lawfulness for Proposed Use or Development for 'Use as a site for seven static caravans for residential occupation'.

COUNCIL REFERENCE: 2017/4346/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/X/18/3198526

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1.0 SITE AND SURROUNDINGS

1.1 The appeal site is described in the section titled 'Site Description' in the officers' Delegated Report attached to this statement.

2.0 APPLICATION DETAILS

2.1 The appeal is against the London Borough of Camden's non-determination of an application for a Certificate of Lawfulness for Proposed Use or Development. The application reference 2017/4346/P was received on 31st July 2017 and registered on 11th August 2017 as a Certificate of Lawfulness for a Proposed Use as a site for seven static caravans for residential occupation.

2.2 No public consultation was undertaken as it involved a Certificate of Lawfulness.

2.3 61 objections were received from various residents in Camden. Objections were also received from Heath & Hampstead Society, Vale of Health Society, Camden Residents Association, Hampstead Neighbourhood Forum, Redington Froggnal Association, Hampstead Garden Suburb Residents Association, and City of London Corporation. These responses are all summarised in the section titled 'Consultations' in the Delegated Report. They have already been forwarded to the Planning Inspectorate.

2.4 An appeal was lodged on 21st March 2018 against non-determination of the application.

2.5 The application was reported for a decision under officers' delegated powers. The officer's recommendation was to refuse the certificate had an appeal not been lodged against non-determination.

2.6 A putative decision notice was duly issued on 20th July 2018, a copy of which is attached to this statement. The reason for refusing the certificate was as follows:

Reason 1. It is considered that the proposed use of the site for 7 static caravans for residential occupation would constitute a material change of use from the current lawful mixed use of the site comprising a 'showpersons site' use and a residential caravan site use. Therefore this material change of use would constitute 'development' requiring planning permission as defined by the Town and Country Planning Act 1990.

3.0 RELEVANT PLANNING HISTORY

3.1 The planning history is set out in the section titled 'Relevant History' of the delegated report.

4.0 PLANNING POLICY FRAMEWORK

4.1 The Development Plan for the area comprises the London Plan and the Camden Local Plan 2017. However in this case, the status and details of the adopted local plan are irrelevant as the appeal concerns a certificate of lawfulness. The application is purely a determination and assessment on the basis of whether the proposed use constitutes a material change of use from

the existing use of the site which would require planning permission. An assessment of its planning merits as to its acceptability under current policies is therefore not relevant or possible here.

5.0 SUBMISSIONS

- 5.1 The Council's case is discussed comprehensively in the section titled 'Assessment' in the officers' delegated report.
- 5.2 As stated in para 1.6 of this assessment section of the officer report, the main issues are to (i) establish what the current and lawful use of the site is, based on the last 10 years of usage; and (ii) whether the proposed use for 7 residential static caravans is materially different from that. It concludes in para 4.1 that the existing lawful use is an overall mixed use comprising a 'showpersons site' and a residential caravan site, and that the proposed use of the site for 7 static residential caravans would be materially different from this.
- 5.3 The report also has 5 appendices attached as further supporting evidence, notably 2 landuse survey plans dated 2011 and 2017. These are all attached to this statement.
- 5.4 In addition to the delegated report, the Council would like to make the following 3 points.
- 5.5 The conclusions reached by the Council on the nature of the existing lawful use was reached after careful consideration of the evidence available to officers at

that time. This conclusion is discussed in para 2.17 of the officer report. The City of London's representations take a slightly different position on the existing lawful use: the City regards the site to be entirely a Sui Generis showpersons site (which comprises a mix of uses including some unrelated residential uses), whereas the Council considers that it is a Sui Generis mixed use comprising a showpersons site and a residential caravan site. Of course the burden of proving that the proposal would not constitute development lies on the Appellant and it is not known what further evidence might be forthcoming.

5.6 Ultimately, the question of the site's existing lawful use is a matter of judgement for the Inspector, based upon the totality of the evidence, and the Council reserves its position pending consideration of all the evidence at the inquiry. The outcome for the Appeal, however, would be the same, based either upon the Council's formulation of the existing use or that of the City. Both Authorities acknowledge that, regardless of the precise nature of the mix of uses within it, the site currently has a lawful Sui Generis use that comprises a mix of uses that is significantly and materially different from the proposed permanent residential caravan site proposed by the appellants.

5.7 The appellant's agent in his correspondence agrees with the Council's conclusion that the site currently has a mixed use (see para 2.17 of the officer report). However he argues that if the equipment and storage was removed altogether from the site, then the site's lawful use would become an entirely residential caravan use and that no planning permission would be required. The Council disputes this, as discussed in paras 3.11-12 of the officer report, as it would result in a materially different landuse here which would require

planning permission¹. The ensuing residential use would only become lawful if it then existed continuously for 10 years or more. In any case, this hypothetical situation has not been reached yet and the site still remains in active showpersons use, thus any discussion on future possibilities of landuse here is academic and irrelevant to the consideration of this appeal.

5.8 The appellants in their planning statement show examples of a possible layout and designs of residential caravans on the entirety of this site. The plan on page 8 indicates a central access road and driveways; the 2 photos on page 9 show substantial sized mobile homes with what appear to be brick or timber plinths. The Council considers that these features, required to facilitate the placing and access of homes on this shallow-sloping site, would constitute operational and engineering operations amounting to development for which planning permission would be required- this would include hard surfacing for roadways and plots, permanent foundations, supporting plinths or pillars, and underground connections for sewage and water.

5.9 In terms of a response to the appellants' grounds for appeal, the appellants have not submitted any further evidence in support of the appeal and their case is reliant on the original application documents, ie. the planning supporting

¹ The distinct nature of a travelling showperson's site and a residential caravan site was expressly recognised by the Court in *Winchester City Council v. Secretary of State for CLG and Others* [2013] EWHC 101 (Admin.), 40 – 41. The distinct nature of the use has also long been recognised in Government circulars, as set out in the Judgment and reflected in planning appeal decisions of the Inspectorate, to which reference may be made. Whilst mere removal of the equipment would not require planning permission, the supplanting of the dominant element of the site's use by the lesser element, as proposed in the CLOPUD Application would amount to a material change of use either as a result of intensification of the residential caravan element and/or because a sole residential caravan use would be materially different from the unique travelling showperson's site use, which partakes of both residential and business-related elements, including storage and repair/maintenance of equipment, as recognised in *Winchester CC and the Circulars*. The Council will refer to caselaw including: *Wipperman v. Barking LBC* (1965) 17 P&CR 225, *Cook v SoSE*. [1982] JPL 644, *Philglow Ltd. V. SoSE* [1985] JPL 318 and *Denham Developments Ltd v. SoSE* [1984] JPL 346, *Cocktails Ltd v. SoSCLG* [2008] EWCA Civ 1523.

statement and site plan.

6.0 APPROPRIATE CONDITIONS

6.1 The need for appropriate planning conditions is irrelevant for this case

7.0 DOCUMENTS

7.1 The Council may refer to all or part of the following list of legislation, national planning guidance, and documents and any other it considers relevant, having regard to the Appellant's case to be identified in its Statement of Case or any other change of circumstances:

- Acts of Parliament and Statutory Instruments
- Government Advice, including but not restricted to the following:
 - National Planning Policy Framework 2018
 - 'Planning policy for traveller sites' (revised August 2015)
 - Caravan Sites and Control of Development Act 1960
- Mayor of London, London Plan 2016
- London Borough of Camden Local Plan 2017
- Council tax, business rates, site licence and Land Registry records
- Correspondence, survey plans and notes in connection with the application and previous applications (by London Borough of Camden, the applicants, their agents and third parties)
- Relevant Inspectors' appeal decisions and court cases

7.2 The Council reserve the right to refer to other documents in response to the Appellant's case should it prove necessary to do so.

7.3 Documents will be made available for inspection online, using the planning application reference 2017/4346/P_or at Council Offices, 5 St Pancras Square, London N1C 4AG.

Please be advised that, if an appointment is made at least 24 hours prior to their arrival, it will be ensured that documents are ready for inspection. The Council Offices are open 0900-1700 Monday to Friday.

Documents attached to this Statement-

Council's putative decision letter dated 20.7.18;

Council officers' delegated report, plus appendices:

Appendix 1- land use survey dated July 2010 (revised March 2011)

Appendix 2- officer's notes dated December 2011

Appendix 3- email to agents dated 20.1.12

Appendix 4- land use survey dated November 2017

Appendix 5- agent's correspondence in January 2018