

Delegated Report		Analysis sheet	Expiry Date:	25/09/2017
		N/A	Consultation Expiry Date:	n/a
Officer			Application Number(s)	
Charles Thuaire			2017/4346/P	
Application Address			Drawing Numbers	
North Fairground Site Vale of Health London NW3 1AU			See decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use as a site for seven static caravans for residential occupation				
Recommendation(s):		Would have refused Certificate if an appeal had not been lodged		
Application Type:		Certificate of Lawfulness (Proposed)		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	61	No. of objections	61
Summary of consultation responses:	<p>No formal public consultation by press advert or site notice</p> <p><u>Objections from 61 Camden residents (including 28 in Hampstead village and 8 in Vale of Health)-</u></p> <p>Support objections made by H&HS (see below); MOL (Metropolitan Open Land) must not be built upon, this is attempt to avoid a planning application for bungalows which will be unacceptable on MOL; sets disastrous precedent for other MOL sites adjoining heath; ‘back door’ device to avoid normal process of getting permission for mobile homes, ‘stepping stone’ to get permission for larger constructions in future; deception to pretend bungalows are caravans as they are permanent structures; sensitive site bordering Heath; causes harm to heath, green space, trees and pond; loss of peace and seclusion of heath; intensification, increased traffic, air and noise pollution from permanent residences, flooding; change in appearance, visually out of character; constitutes material change of use from existing mixed use of temporary residences for travelling showpeople and of storage and maintenance of equipment, the occupation and usage of which vary according to season; proposed use for 12 permanent bungalows with driveways and parking is materially different and will alter appearance of whole site, alter extent and type of activity throughout year, and increase volume of regular traffic with residents’ cars; proposed use contrary to Camden Local Plan and its para 3.244 (<i>note that this ref is incorrect</i>); no permanent residents allowed; highlight errors in planning statement referring to 12 and 7 caravans (<i>this has since been corrected</i>).</p>					
CAAC/Local groups* comments: *Please Specify	<p><u>Heath and Hampstead Society (H&HS) objects-</u> MOL (Metropolitan Open Land) must not be built upon, this is attempt to avoid a planning application for bungalows which will be unacceptable on MOL; sensitive site bordering Heath; constitutes material change of use from existing mixed use of temporary residences for travelling showpeople and of storage and maintenance of equipment, occupation and usage of which vary according to season; proposed use is materially different and will alter appearance of whole site, alter extent and type of activity throughout year, and increase volume of regular traffic with residents’ cars; will set disastrous precedent for other MOL sites adjoining heath; counsel advice submitted with corrections on 7.9.17 (which refers to issues of material change of use, off-site effects and intensification)</p> <p><u>Vale of Health Society objects-</u> endorse objections by H&HS and above-mentioned legal advice; blatant attempt to develop MOL site without getting planning permission; they submitted evidence for last CLEUD application in 2010 that it was a showmans site; this continues to be the case with fairground equipment</p>					

storage and repair, temporary caravan accommodation, fairworkers for Winter Wonderland occupying site; other items and small rides brought on site in connection with bank holiday fairs; use of other residential caravans is intermittent and informal with basic facilities.

Camden Resident Association objects- compromises amenity of residents, violates sustainability considerations, cannot be allowed on MOL without exceptional circumstances, violates Local Plan, clearly a material change of use.

Hampstead Neighbourhood Forum objects- clearly a material change of use from current mixed use, permanent residences on MOL are contrary to NPPF, London Plan and Local Plan.

Redington Froggnal Association objects- harms biodiversity on Site of Metropolitan Importance for Nature Conservation; harms Conservation Area and nearby listed buildings.

Hampstead Garden Suburb Residents Association objects- site has long been a mixed use site with the principles of mobility and ability to easily change the onsite mix; proposed use by permanent bungalows with parking is a major change; this is attempt to avoid a planning application which will set precedent for other MOL sites.

City of London Corporation objects- insufficient justification or evidence submitted to support the case that the use of the site for seven static caravans would be 'lawful'; the application would result in a material change in use of the site that would require the submission of a full planning application; applicant makes a number of assumptions that are either not supported with facts and conclusive evidence, or are not relevant to their application; City accepts that the site has a mixed use which is 'Sui Generis' and proposed use would result in a material change in use of the site that would require the submission of a full planning application.

Site Description

1.1 The north and south fairground sites consist of 2 large open sites, opposite each other on the eastern edge of the Vale of Health village bordering Hampstead Heath. They were formerly used for fairground purposes since before the war, and originally in the same ownership. The south site was sold off in 1979, has been vacant and overgrown since, and only recently has had unauthorised structures erected on it which are now subject to enforcement notices.

1.2 The north site is owned and used by the Abbott family since the 1950s, who live in caravans and use it for their business as 'showpeople' in connection with travelling fairs. There are also other caravans used by unrelated residents and other fairground workers. The site contains a number of different caravans, mobile homes, car and lorry parking, trailer and equipment storage, plus some toilet and store sheds, in varying degrees of occupation throughout the year. The site is approx. 2214 sqm in size. It has rough hard surfacing and a metal fenced boundary with one gated vehicular access from the culdesac roadway of Vale of Health, opposite the south fairground site. It is connected to mains electricity, water and sewerage. The history of usage is discussed more in the Assessment section below.

1.3 The site is on the eastern edge of the Vale of Health and directly borders Hampstead Heath on its north and east sides. On its west side is 1-4 East View, four 3 storey cottages facing the site, and the flank wall of 6 The Gables, a 4 storey terrace. Further north the heath rises uphill while further south of the 'south fairground site' is Hampstead Ponds.

1.4 The site is located in Hampstead conservation area, and designated Metropolitan Open Land (MOL) and Private Open Space (POS).

Relevant History

12.9.97- Planning permission refused for redevelopment by block of 15 flats plus carparking, ref PW9702255. Appeal (heard at public inquiry) dismissed on 7.5.98.

12.9.97- Planning permission refused for redevelopment by 8 houses and block of 8 flats plus carparking, ref PW9702438.

28.5.10- Application submitted by current owners (Abbotts) for Certificate of Lawfulness for existing use (CLEUD) as a residential caravan site, ref 2010/2845/P.

Later withdrawn by agents 23.2.12, as officers could not support the application.

31.7.17- Application submitted for Certificate of Lawfulness for proposed use as a residential caravan site.

21.3.18- Appeal submitted against non-determination of current application.

Relevant policies

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.

Assessment

1. Proposal

1.1 The application is to ascertain whether the proposed use for seven static caravans for residential habitation here would constitute a material change of use such that it would require planning permission. The agent argues that there is no change of use and therefore the proposed use is “lawful development”.

1.2 The planning statement originally erroneously referred to 12 caravans in its conclusion and was corrected in October to refer to only 7 caravans. The statement includes an illustrative layout of the new use, showing 7 large rectangular pitched roof structures arranged around a central access driveway with individual carspaces; it also gives as examples 2 images of types of mobile homes that could be used here.

1.3 The applicants are Knightsbridge Parks LLP who have an option to buy the site from the Abbotts and use it for mobile homes. As this option expired at the end of March 2018, they submitted an appeal against non-determination to keep this option alive.

1.4 The grounds of the appeal are solely against the non-determination of the application by the Local Planning Authority. The appellant’s case is set out in the supporting statement that accompanied the application.

1.5 It should be noted that the site’s usage and the various applications for its use, notably the 1997 ones for redevelopment, the withdrawn Certificate of Lawfulness for existing use and the current one for a proposed use, have attracted much interest and concern from local people and groups who have also provided evidence on the site’s usage.

1.6 The issues to consider here are to establish what the current and lawful use of the site is, based on the last 10 years of usage, and whether the proposed use for 7 residential static caravans is materially different from that.

2. Background history and existing use

2.1 The use of the site has fluctuated over time in terms of numbers and types of people and structures accommodated here. The 1997 appeal decision is a useful starting point in establishing the original use. It confirmed that the established and lawful use of the site was as a 'showpersons site' as defined by Circular 22/91 (since superseded by 04/07) with mixed residential/storage and 'winter quarters'. The Circular advised that such sites are 'Sui Generis' with a mix of winter caravan and equipment storage, summer fairground use and some older members, dependents and children living there all year. The Inspector agreed that the lawful use was probably as winter quarters as described in the Circular on travelling showpeople.

2.2 At the time of the last Certificate application in 2011, it was noted by the case officer that one of the joint applicants, Charlie Abbott (now deceased), lived and ran it as a showpersons'/ caravan site from 1980, with no restrictions on who actually lived there. Thus at one stage in 2003, the site use intensified when various caravans, unrelated to the owners and showpeople, moved onto the site; however, following complaints and enforcement investigations, they later moved off the site. Nevertheless over time, other caravans moved on and stayed there with residents unrelated to the established fairground use. In 2006, following enforcement investigations, it was concluded that it was a showpersons' site with fluctuating numbers of travelling showpeople or related to fairgrounds or part-time workers (eg. a mechanic). In 2011, following a site visit interview with the applicant and his son, it was noted that they considered the site to be a primarily showpersons' site with other residents living there who either were employed at fairs or who had other jobs but also helped out at fairs; it was not solely a residential caravan site. Both Charlie Abbott and his son Charles senior and wife were retired and lived there, along with his sister and daughter; the 2 grandsons Charles junior and Cy were members of the Showman's Guild and used the site as their base during and between fairs.

2.3 More detail on history and evidence of usage in relation to assessment of the 2010 Certificate is summarised in officer's notes dated 8.12.11 (*attached in appendix 2*).

Landuse survey 2010

2.4 A land use survey was carried out in July 2010 (later revised in March 2011) for the last Certificate application, and was accepted as accurate by the last agents. *This is attached as a coloured site plan in appendix 1*. It shows the following ratio of uses:

16 residents: 7 showpeople or related to them; 5 people work in fairs or help out; 4 unrelated; 5 empty caravans.

30 mobile items used by: 7 retired dependent Abbotts; 4 active showpeople, 5 fairground equipment/stores (9) = 16;

5 fairworkers/helpers; 4 unrelated people, 3 unrelated empty caravans (7) = 12.

2.5 The balance of probability test was how it had been used over the last 10 years, based on a measure of numbers of residents and numbers of caravans or units on the site.

2.6 Officers concluded, in their email to the agents dated 20.1.12 (*attached in appendix 3*), that the site was 'most probably a mixed use of (a) showpersons' site with numerous dependents and some fair workers (total 12) and (b) of other unrelated residents or empty uses (total 7), rather than a predominantly residential caravan site with ancillary showpersons' site as winter quarters and storage'.

2.7 The application was later withdrawn, as officers could not agree with the applicants that the site was purely a residential use and therefore it would be refused.

Landuse survey 2017

2.8 Following receipt of the current application, another land use survey was carried out in November 2017. *This is attached as a coloured site plan in appendix 4*. It shows the following-

22 residents: 8 showpeople or related to them (3 temporarily away in November); 5 people work in

fairs (4 temporarily for Winter Wonderland in November) or help out; 9 unrelated or empty caravans. 38 mobile items used by: 1 retired dependent Abbott; 4 active showpeople, 20 fairground equipment/stores = 25; (note that this is based on the survey in Nov and additional showpersons' caravans would be present at other times on the plots of Charles junior and Cy) 3 fairworkers; 9 unrelated/empty caravans plus Landrover = 13.

2.9 This has been accepted as accurate by the current agent (email dated 29.1.18- *attached in appendix 5*). Moreover the agent in his planning statement does not disagree with the Council's previous conclusion in 2011 that the site's lawful use is one of a mixed use comprising caravans for residential occupation, some for showpeople, and storage of fairground equipment.

2.10 As part of a site visit interview with one of the owners (Charles Abbott junior), the following was noted regarding the current use. Charles senior and wife still live there as retired dependants. Charles junior and Cy, as showpeople and registered members of the Showmans Guild, live on the site approx. 3 months a year in Jan to March before going elsewhere to run fairs until November. Some fairground workers resident on the site also work during winter months at Hyde Park Winter Wonderland fair. The Abbotts have apparently also recently bought a plot in Royston to store big equipment as the Vale of Health site is too small and inconvenient to accommodate this (as shown previously on the 2011 survey plan). The site visit noted the storage of 3 sets of rides, a bouncy castle, a teacup ride, 2 food trailers and a falafel stall (the latter is operated by someone else not resident at the site). It was also noted (as recorded on the survey) that during the absence of Cy Abbott, part of his plot was occupied by other fair worker caravans and storage. In addition to the Abbott brothers, their sister Charlotte and her husband, forming a separate showpersons' family (the Hayes), now occupy the northeast corner of the site. This is a new element since the last survey in 2011.

2.11 Officers consider that the usage of the site has not materially changed since the time of the last survey in 2011. Indeed it could be argued that since 2011 the use of the site by active showpeople has actually intensified since the loss of some retired dependents and the arrival of the Hayes family who are a separate showpersons' unit. It is acknowledged that the precise usage in terms of numbers of residents and mobile units fluctuates over the year so that fairworkers and showpeople come and go at different times and reuse each other's plots, thus the landuse surveys can only be indicative at any one point in time. According to local objections, the site becomes more intensively occupied by other fairground worker caravans and equipment at different seasons through the year, notably during the operation of Winter Wonderland at Hyde Park and the 3 bank holiday fairs on the Heath.

2.12 In terms of numbers of people occupying the site at the time of the survey in November, about 10 people were involved with fairground use and 9 were unrelated residents. Although there is one caravan used for retired dependants (C. Abbott senior and wife) that will remain occupied throughout the year, there is no evidence to suggest that, during summer months when fairs are being run elsewhere, the site will become empty of fairground-related caravans and equipment.

2.13 In terms of site area occupation, the survey plan clearly and graphically demonstrates by colour notation that the site has a genuine mixed use, with well over half of the site being used by 2 showpeoples' families, several fairworkers, and their storage of equipment and fairground facilities (rides and food stalls). The remaining third of the site is occupied by a number of unrelated residents' caravans, used casually through the year (although it was noted that 2 of these residents may sometimes help out at fairs). The number of 9 such residential caravans is broadly unchanged from 2011 when 7 were evident at the survey.

2.14 It is also noted that the 2017 survey plan also shows a large number (over 12) of equipment and stores for showpeople and fairground workers rather than just their residential caravans. The areas of site occupied by these items are probably the same as the fewer but larger items of equipment identified in July 2010 (annotated 'winter equipment storage Nov-Mar'), even though they were temporarily not there during the summer.

2.15 The Camden Local Plan 2017 (in para 3.287 of the chapter on Accommodation for travellers)

advises that the private North Fairground Site provides 5 plots for travelling show people.

2.16 As explained both in the agent's statement and in Camden's Local Plan (in para 3.286 of the chapter on Accommodation for travellers), the Government's 'Planning policy for traveller sites' (revised August 2015) sets out definitions. It states that 'travelling showpeople' means 'Members of a group organised for the purposes of holding fairs, circuses or shows...'; sites or pitches for these people are described as 'mixed-use plots...which may/will need to incorporate space or to be split to allow for the storage of equipment'.

2.17 In conclusion, on the basis of the evidence from both 2011 and 2017, it is considered that the site still has a mixed use of (a) showpersons' site with some dependents and some fair workers and of (b) other unrelated residents, rather than a predominantly residential caravan site with ancillary showpersons' site as winter quarters and storage. It is also considered that it is reasonable to assume, without any clear evidence to prove the contrary, that this mixed use ('Sui Generis') has probably subsisted for over 10 years since 2006 (the time of the last enforcement investigation) and is thus now lawful. The agent has agreed (by email dated 23.1.18- *attached in appendix 5*) that 'the site has a mixed use and that this mixed use has been established for more than ten years'.

3. Proposed use

3.1 The applicant argues that the proposed use of the site for 7 caravans in residential use will not amount to a material change of use requiring planning permission. The argument used is that occupation of a site by a showperson would not make a difference in characteristics to occupation by a person in any other profession. Thus the caravans could all be occupied by unrelated people with different jobs and situations, who may also need to store vehicles. Some of these residents could of course include showpeople. Furthermore the stated intention is to reduce the scale of use and remove the equipment storage. Consequently it is argued that no permission would be required to change use of all caravans to an entirely residential usage. It is noted that the agent does not refer to a proposed use for Class C3 purposes, and it is assumed that this is also a Sui Generis use.

3.2 It should be noted that the definition of a 'caravan' (as provided by the agent in his email dated 23.1.18) is very broad and does not just include traditional caravans with wheels, as are currently evident on the site. The definition of a caravan is contained in the Caravan Sites and Control of Development Act 1960 (as extended by the Caravan Sites Act 1968) and includes- '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...'. It also includes- 'A structure designed or adapted for human habitation which is (a) 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)...'. There are also restrictions on dimensions of the 'caravans'.

3.3 Thus the residential caravans that could be used on the site could include large mobile homes that are transported by lorry and assembled on site. The images given by the agent in his statement resemble prefabricated bungalows with no wheels evident. These images and the illustrative site plan, although only examples of possible designs and arrangements here, clearly indicate the type of accommodation and layout as a mobile home park that the applicant intends to operate here, on the basis of the legal definition of a caravan.

3.4 It is accepted that residential caravans on this site can include a wide variety of 'mobile' structures as defined in the legislation. It is also acknowledged that there is currently no control over the type, size and number of caravans on this site, so the existing type, size, number and disposition of such structures could change here and the showpeople could live in larger and fewer mobile homes. However officers disagree that the change from the currently mixed use to an entirely residential use would not be materially different.

3.5 As noted above, it is considered that the showpersons' use is an integral part of the overall mixed

use of the site and is not an ancillary element to a primary residential use here. The site has clearly changed in usage over 20 years, in that it was originally a complete 'showpersons site' in 1997 but over time more unrelated caravans have moved onto the site and the fairground use has dwindled, so that by 2011 and continuing to 2017, it was considered to be more of a mixed use comprising both showpeople, other fairworkers and unrelated residents. The surveys show that it is not just in a residential use.

3.6 The showpeople, of which there are now 2 separate families on site, comprise a tightly knit and related community of residents who live here, primarily as winter quarters although some (notably the retired dependants and children) may live all year round. However they also use it as a base for their fairground operations elsewhere by storing and maintaining equipment, fairground rides, food stalls, etc. The same applies to a lesser extent for the other fairground workers and helpers here, who also may need to store equipment here. The 2017 survey showed that in winter there was a high proportion of equipment etc here, which is integral to the overall use. It is accepted that in summer months this would be temporarily moved offsite and many of the showpeople and fairworkers would be living elsewhere. Nevertheless this is an inherent part of the essential seasonal nature and character of a showpersons site which varies in its intensity and mix of usage throughout the year.

3.7 It is also considered that the site still has a mixed use character and appearance. Although in 2017 the southeastern corner appears entirely residential with a regular row of parked caravans, the other areas have a fluctuating mobile and adhoc mix of permanent and temporary caravans for showpeople and fairworkers, storage, equipment, rides and refreshment trailers.

3.8 It is concluded that existing usage of most of the site thus clearly accords with the statutory definition of 'travelling showpeople sites' which include a mixture of residential caravans and storage for their specific function of running fairs there or elsewhere.

3.9 In contrast, the proposed use for 7 static caravans solely in residential use over the entire site, as illustrated in the planning statement, would involve fewer and larger mobile homes that could and would be occupied on a permanent basis by unrelated residents who will have different jobs and lifestyles. There is no guarantee that any of them will be occupied by showpeople or fairground workers. There would be no space necessarily available for extensive equipment storage and repair, although some homes may want domestic stores and generators. The residents could be permanently living here so that the intensity of use does not fluctuate throughout the year as it currently does depending on fair seasons.

3.10 It could be argued that there may be a less intensive use by 7 homes compared to the current use in winter months when all showpeople and fairworkers are present on the site and all the unrelated caravans were fully occupied. However showpeople's work is of a peripatetic nature and they are often away during the summer months, with the result that there is likely to be a more intensive use in summer months by the proposed permanent homes compared to the current use's operation in that season. Overall there would be a regular and consistent pattern of usage and activity throughout the day and year by new residents, their school children, cars, deliveries and other activities associated with permanent domestic living. This may result in more regular traffic movements from residents using cars throughout the day, week and year, as opposed to the current sporadic and irregular vehicular movements of caravans, lorries and trailers which vary throughout the day and season. It is noted that the courts have held that the change of use of a site from use as a seasonal caravan site to use for permanent residential purposes constitutes a material change of use, in part due to the likely traffic effects that permanent residential accommodation generates. Although there are currently 9 unrelated residential caravans on site, these are small and vacant for some or much of the year and they only occupy part of a much larger site used for other purposes.

3.11 The agent claims that no permission would be required for removal of fairground equipment and storage and cessation of this element of the mixed use, which would result in an entirely residential caravan site. Although it is true that loss of these items would not require permission in themselves, it would result in a change in the overall nature and usage of this site as a true 'showpersons site' with a mix of activities.

3.12 It is thus considered that there would be a material change of use from the current mixed use for showpeople and other fairground workers with their storage needs, plus unrelated residents, to an entirely residential occupation on a permanent basis.

3.13 It is also considered that not only the precise use of the site would change to an entirely residential one but also the character and appearance of the site would change. The site currently has an open character resembling a hard surfaced yard with various caravans, vehicles and stored equipment, much of which moves around on and off the site through the year and seasons. Indeed, probably for that reason, it was designated as MOL and POS. The site was also described in 1997 as appearing 'semi-vacant' according to officer reports; this can continue to be the case now in summer months when activities move away to other functioning fairgrounds and the site appears quiet and underused. However it is considered that a static residential caravan site with access driveway and private gardens, as envisaged by the applicants on their illustrative layout plan, would change this character by becoming less open and more urbanised with regularly-arranged large mobile homes permanently positioned here, which could give the impression of a suburban housing estate. A side effect of this intensification is that it could have a harmful impact on the openness of the MOL and POS.

3.14 Furthermore there would be no control within a Certificate of Proposed Use over the actual disposition and size of the 7 'caravans'. Although shown as large mobile homes on the submitted plan, there could also be 7 much smaller traditional caravans arranged in a more spacious layout or even concentrated in one side to reserve part of the site as open space, which would result in a less intensive use of the site than currently existing. Nevertheless, whatever permutations are involved, the character of the site will become one of a purely residential caravan park.

4. Conclusion

4.1 It is considered that the proposed use of the site for 7 static residential caravans would be materially different from the current lawful mixed use of the site comprising a 'showpersons site' and a residential caravan site. Accordingly this material change of use would constitute 'development' requiring planning permission and thus a Certificate of Lawfulness for a Proposed Use cannot be granted.

Attachments to report-

- 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