
**NORTH FAIRGROUND SITE
VALE OF HEALTH
LONDON NW3 1AU**

PUBLIC INQUIRY

PROOF OF EVIDENCE

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METROPOLIS PLANNING & DESIGN

ON BEHALF OF THE CITY OF LONDON CORPORATION

APPEAL REFERENCE: APP/X5210/X/18/3198526

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TABLE OF CONTENTS

- 1.0 Qualifications and Experience
- 2.0 The Role of the City in Preserving the Character of the Heath
- 3.0 Introduction
- 4.0 The Lawful Existing Use
 - Description of the Property
 - The Planning Unit
 - Definition of a 'Showpersons Site'
 - Planning History
 - The Nature of Activities Undertaken at the Site
 - The Nature and Content of the CLOPUD Application Submission
 - The Test of Evidence
 - The Available 'Evidence'
 - Conclusions on the Lawful Existing Use
- 5.0 A Material Change of Use
 - Change of use from Showpersons site to residential caravan site
 - Change of use from mixed-use showpersons site and residential caravan site to residential caravan site
- 6.0 Operational Development
- 7.0 Conclusion

LIST OF APPENDICES

- DOC PON 1 - Extract from Hampstead Heath Management Strategy 2018-2028
- DOC PON 2 - S.55 of the Town and Country Planning Act 1990 (as Amended)
- DOC PON 3 - Camden Local Plan 2017 Policy H11 para 3.287 and Supporting Text
- DOC PON 4 - Winchester City Council v SSLG 2013
- DOC PON 5 - 1998 Appeal Decision
- DOC PON 6 - Site Photographs since 2008
- DOC PON 7 - Site Photographs November and December 2018
- DOC PON 8 - Council Tax Records
- DOC PON 9 - Business Rates Records
- DOC PON 10 - Council Survey Plan 2011
- DOC PON 11 - Council Survey Plan 2017
- DOC PON 12 - Hampstead Conservation Area Statement

1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 I hold an MA (Honours) in Town and Country Planning from Heriot-Watt University and I have been a full member of the Royal Town Planning Institute since August 1998.
- 1.2 I am a Director of Metropolis Planning and Design. Metropolis is a multidisciplinary planning and architectural practice based in Central London. I have worked on projects in the London Borough of Camden and other Central London Boroughs for many years.
- 1.3 I am instructed by the City of London Corporation (“the City”) to assist The Inspector in the consideration of this appeal against non-determination of the application made by Knightsbridge Parks LLP (‘the Appellant’) for a Certificate of Lawfulness of a Proposed Use (CLOPUD), submitted to Camden Council on 31 July 2017 and given reference 2017/4346/P (‘The Application’).
- 1.4 The City have responsibility for the management of Hampstead Heath, and an obligation to ensure that any development on the Heath or its boundary would not adversely affect its character.
- 1.5 I have reviewed the submitted material, background information and the decision notice issued by the London Borough of Camden containing putative reasons for refusal of The Application.
- 1.6 I visited the site on 29 August 2018 and 17 September 2018 and can comment on the appearance of the site on those days. I have also reviewed various photographs of the site over time, and can comment on the inferences which I consider can be drawn as to the use and character of the site as it has developed over the relevant ten year period.
- 1.7 I have prepared a consolidated set of supporting appendices number DOC PON01 to DOC PON12. All document references in my evidence refer to these reference numbers.

DECLARATION OF TRUTH

- 1.8 I confirm that the evidence which I have prepared and provide for this appeal in this proof of evidence is true to the best of my knowledge and belief and has been prepared, and is given, in accordance with the guidance of my professional institute and I confirm that the opinions expressed are my true and professional opinions.

2.0 THE ROLE OF THE CITY IN PRESERVING THE CHARACTER OF THE HEATH

2.1 The City took over the management of Hampstead Heath from the London Residuary Body in 1989. The City is obliged under various statutory provisions, including the London Government Reorganisation (Hampstead Heath) Order 1989, to protect and preserve the Heath as Open Space, and to ensure that any development on the Heath or its boundary would not adversely affect its character. The City has recently adopted a Management Strategy for the Heath¹ and takes an active role in making representations in respect of proposals which the City considers could compromise the open, natural character of the Heath.

2.2 The Vale of Health settlement, and Conservation Area, sits within the boundary of the Heath included in the Management Strategy and the City therefore take an active interest in proposals and give full consideration to those that will have a material effect on the Heath.

2.3 The 10 year Management Strategy was approved by the Hampstead Heath, Highgate Wood and Queen's Park Committee on the 28 November 2018. The principal theme of the Management Strategy is to ensure that '*the Heath is protected and conserved*'. The strategy for achieving this objective includes:-

"careful management to conserve its unique mix of wild and natural spaces, rich mosaic of habitats, heritage, gardens, sporting, play and visitor facilities. In short, to ensure its rich mosaic of habitats continues to thrive and flourish, remaining resilient to changes over time²."

2.4 To achieve what is referred to as 'Outcome A' in the document, a series of Priorities are set out in the Management Strategy. Priority 2 is to ensure that heritage aspects and landscape character are maintained:

¹ Extract from Hampstead Heath Management Strategy 2018-2028 – PON DOC 1

² From Outcome 2 p.11 Hampstead Heath Management Strategy 2018-2028 –PON DOC 1

“The varied and open character of the Heath landscape is a function of its underlying geology and topography, overlaid with centuries of human intervention, resulting in distinctive views and vistas, both from and towards the Heath. The interplay between the landscape character, archaeological remnants and historical features, and the wider London context, is unique. A proactive approach to identifying and recording the Heath’s heritage and archaeology will ensure the distinctive history of the Heath continues to be conserved. Co-operation among the local community and partner organisations to protect fringes from encroaching urbanisation will ensure this signature landscape character is valued and conserved.”³

2.5 To achieve this outcome, the Management Strategy states that the City will seek to ensure that:

- Historic Assets are conserved and sensitive areas are protected from impacts
- Landscape character is maintained
- Encroachment and detrimental development are resisted

2.6 And the Management Strategy contains a commitment, made by the City to:

“Proactively participate in local planning processes to resist development that would be detrimental to the landscape character, ecology and hydrology of Hampstead Heath and its environs.”

2.7 For the reasons set out above, and enshrined in the Management Strategy, the City has sought Rule 6 status in this Appeal.

³ Hampstead Heath Management Plan 2018-2028 p11 –PON DOC 1

3.0 INTRODUCTION

- 3.1 The Application submitted by the Appellant is for a Certificate of Lawfulness of Proposed Use, and, also, in this instance for Proposed Development.
- 3.2 The Appeal site is designated as Metropolitan Open Land (MOL) and Private Open Space (POS) respectively and lies within the Hampstead Conservation Area.
- 3.3 As this appeal is concerned with an application for a Certificate of Lawfulness, the policy context of the site has no relevance, save for references to the use of the site in the Local Plan itself (compared with how the matter would have been considered had the Appellant applied for planning permission for the requested residential use). I am of the view that the Appellant should have applied, in all the circumstances of the case, for full planning permission for a material change of use of the site allowing the policy context to be fully argued and the application to be properly assessed against the restrictive policy context of the MOL and POS designations and the requirements of the Act to preserve or enhance the character and appearance of the Conservation Area.
- 3.4 The Application, and Appeal, specifically seek to test whether the use of the site solely for the siting of 7 static caravans for residential occupation, would be lawful. In assessing an application for a Certificate of Lawfulness, I consider that two steps are necessary:
1. Establishing the *lawful existing use* of the planning unit;
 2. Demonstrating that the use and development proposed *would not require planning permission* in order to be lawful – ie. In the case of the use of the land, that a material change of use would not occur if the Appeal proposal were to be undertaken
- 3.5 I also note that no reference is made in the description of the use for which the Certificate is sought to any operational development. Section 55 of the Act is very clear in that planning permission is required for both operational development and a

‘material change of use of land’⁴. However, it is also apparent from the supporting material submitted with the application, (in terms of proposed site layout and indicative images of the static caravans proposed) that permission for operational development, in addition to permission for the use proposed, would be required.

- 3.6 To assist the Inspector, I set out in this proof of evidence my view on the lawful existing use of the Appeal site, based on consideration of the activities of the site and the planning unit, a review of the Appellant’s submission, and such evidence that has been provided by The Appellant to support The Application⁵. In undertaking this assessment I pay regard to the elements that comprise a ‘showpersons site’ in terms of activity, character and use with reference to the definitions contained in national planning policy guidance and case law.
- 3.7 I then set out my conclusions and assessment of the Lawful Existing Use of the property.
- 3.8 With this starting point in mind, I then set out in subsequent sections of this evidence why I consider that the proposed use would be a material change requiring planning permission and why the elements of operational development required to enable this change of use would also require planning permission.
- 3.9 I note from the Statements submitted by the Appellant (at application stage) and the Council that they both consider the existing use of the site to be a mix of a showpersons site and a residential caravan site; albeit in their Statement of Case, the Council has reserved it’s final position on the lawful existing use of the site pending consideration of the facts of the case and the totality of evidence presented to the Inquiry. All parties seem to agree that the site remains in use as a showpersons site. The question is whether it remains solely in that use, or in that use plus an additional unrelated⁶ residential use (which is the case being made by the Appellant and the Council - subject to the caveat above). My assessment of the information submitted with the Application, the Appeal and a review of the planning history and available records of

⁴ Town and Country Planning Act 1990 (as Amended) – S.55 – DOC PON02

⁵ As required by S.192 and Planning Practice Guidance Notes 006 Reference ID: 17c-006-20140306 and Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

⁶ ‘unrelated’ appears to refer to residential uses by persons not involved with fairground or showpersons uses

the use of the site is that the evidence does not support the contention that an additional, unrelated residential use has existed on the site for a continuous period of ten years from 30 July 2007 to 31 July 2017, which would be the operative period. The Appellant would need to show to establish the use as lawful.

4.0 THE LAWFUL EXISTING USE

Description of the Property

- 4.1 The site is described in detail in para 1.3 of the officers report prepared in respect of the original application. It refers to the North Fairground Site (as distinct from the South Fairground site). The North Fairground site is 0.2214ha in area. The red line submitted with the original application appears broadly consistent with the site boundary.
- 4.2 The site is effectively level, broadly rectangular and fenced along the length of its boundary. It has a single point of access from the Vale of Health, a road which continues in a north easterly direction linking directly with the footpath network of the Heath and the wider open spaces beyond. The site directly borders the Heath. As a peripheral part of the Vale of Health settlement, it also lies within the Hampstead Conservation Area boundary.
- 4.3 The site is effectively a large area of hardstanding, with no trees and only intermittent vegetation around the periphery of the site.
- 4.4 The site is identified in the Camden Local Plan as Metropolitan Open Land and Private Open Space. There is also a description of the site in supporting text to the housing policies of the Plan to the site providing 5 'plots' for travelling showpersons⁷.

The Planning Unit

- 4.5 I believe it is reasonable to consider that the 'planning unit' for which the Certificate is sought, relates to the whole 'North Fairground site'. This would be consistent with the clearly defined site boundary and the red line plan submitted with the application.
- 4.6 There is no obvious subdivision between activities on the site, no internal partitioning or physical means of separation or delineation within the confines of the site boundary.

⁷ Camden Local Plan 2017 Policy H11 para 3.287 – DOC PON03

- 4.7 The site boundary, and boundary of the planning unit would seem to be common ground between all the parties.

Definition of Showpersons Site

- 4.8 As noted above, it is common ground between the parties that the site remains in use as a travelling showperson site either as the sole use (the City) or as part of a mixed use (the Appellant and possibly the Council, subject to the caveat set out in para 3.9 above).
- 4.9 There are a number of sources from which the appropriate planning definition of a showpersons site can be obtained, with national guidance, and case law providing context for a suitable definition.
- 4.10 While Circular 04/2007 has been superseded by *Planning Policy Guidance for Traveller Sites* published in August 2015, I consider that the description in Circular 04/2007 is still pertinent, and the more succinct nature of the 2015 Planning Policy for Traveller Sites does not contradict or undermine the rationale or the applicability of this summary:

“Showpeople are members of a community that consists of self-employed business people who travel the country, often with their families, holding fairs. Many of these families have been taking part in this lifestyle for generations. Although their work is of a mobile nature, showpeople nevertheless require secure, permanent bases for the storage of their equipment and more particularly for residential purposes. Such bases are most occupied during the winter, when many showpeople will return there with their caravans, vehicles and fairground equipment. For this reason, these sites traditionally have been referred to as “winter quarters”, with individual pitches generally referred to by showpeople as plots. However, increasingly showpeople’s quarters are occupied by some members of the family permanently. Older family members may stay on site for most of the year and there are plainly advantages in children living there all year to benefit from uninterrupted education.”

4.11 This summary captures the mix of activities and acknowledges a general trend to a more permanent level of occupation that travelling showpersons sites often have, and the reasons for it – notably provision of permanent accommodation for older family members or children.

4.12 The preface goes on to explain:

The nature of showpeople's sites is unusual in planning terms. The sites often combine residential, storage and maintenance uses. Typically a site comprises areas set aside for the showpeople's accommodation – usually caravans and mobile homes – and areas where vehicles and fairground equipment can be stored, repaired and occasionally tested. The area of land set aside for accommodation by one family unit and the area of land set aside for the storage and maintenance of their equipment would collectively form a plot. This means that the sites do not fit easily into existing land-use categories. The requirement for sites to be suitable both for accommodation and business uses is very important to the travelling showpeople's way of life as they find the principle of site-splitting unacceptable.

4.13 The summary above, is a succinct description of the nature of activity, mix of uses expected on a travelling showpeople's site and the difficulties of disentangling these uses as the Appellant now appears to seek to do.

4.14 Circular 04/2007 also acknowledges the changes that have occurred in recent times to the nature of Travelling showpeople activities:

"The traditional pattern of showpeople's travelling is changing and the community has generally become more settled. For example, a reduction in the number of large scale traditional fairs has lead to a diversification of showpeople's activities involving more localised travelling and the need for more permanent bases on which to live and maintain their equipment"

4.15 Consistent with this, in *Winchester City Council v SSCLG* [2013] EWHC 101⁸ (Admin), Philip Mott QC (sitting as a Deputy High Court judge) considered the various Circulars and Policy Statements relevant to travelling showpersons sites and then went on to draw conclusions as to the nature of such sites as follows (see para. 40 of the judgment):

“i) Travelling showpeople are a distinct group, which does not include gypsies and travellers.

ii) As a group they have their own particular planning needs.

iii) There is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use by gypsies and travellers.

iv) Even more so, there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site.”

4.16 This judgment went on to conclude that *“a travelling showpeople’s site” may be a significant and separate land use in planning terms*” (see para. 41 of the judgment).

4.17 Planning Policy for Traveller Sites August 2015 briefly touches upon the mixed-use nature of travelling showpeople sites.

9. Local planning authorities should have regard to the need that travelling showpeople have for mixed-use yards to allow residential accommodation and space for storage of equipment.

4.18 ‘Planning Policy for Traveller Sites August 2015’ also provides the following definition:

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.

⁸ Summary of judgement attached as DOCPON04

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.

- 4.19 The ‘plot’ is therefore larger than a single pitch for a caravan as it also comprises space for storage and maintenance of equipment – ie. It itself involves a mix of activities.
- 4.20 The description from Circular 04/2007 is absolutely consistent with the use and activity on the site. I also consider that, consistent with the High Court’s position, a travelling showpersons site should be viewed as entirely distinct in planning terms from that of a residential caravan site.
- 4.21 Taking this mix of uses as a starting point for what one might consider acceptable uses on the site, it is conceivable that in amongst these uses, there might be a *de minimis* element of other residential uses, not sufficient in scale, duration or activity to change the overall nature of the use (or indeed to warrant enforcement proceedings).

Planning History

- 4.22 With regard to the Planning History of the site there is no record of a planning permission for any specific use or of a Certificate of Lawfulness being granted that would confirm the lawful existing use of the site.
- 4.23 Two applications for residential redevelopment were submitted in 1997, one for 15 flats, the other for 8 no. houses and a block of 8 no. flats. Both applications were unsuccessful. The scheme for 15 flats was subject to an Appeal that was dismissed in May 1998. When considering the existing use of The Site at that time, The Officer’s Report described the use of the site as:

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.

- 4.24 This is a description which the Appellant confirms is broadly consistent with the current use of the site⁹, and the the Appeal Inspector in 1998 took the view that the lawful use was probably as ‘winter quarters’ as described in circular 22/91¹⁰.
- 4.25 The site was subject to an enforcement investigation between 2004 and 2006 arising from concern as to the nature of occupation. Although a file was opened by the Council, these investigations did not result in the issuing of an Enforcement Notice. I understand that the initial complaint was raised when there was a noticeable increase in the use of the site by a group of what has been described by the Council as ‘New Age Travellers’ when they moved onto the site¹³. This separate and distinct group moved off the site in 2005 following the Council’s initial investigations, and the enforcement file was closed in 2006 when the Council had concluded their review and confirmed that the use of the site remained as a showpersons site and no material change from that use had occurred.
- 4.26 There is, subsequent to that investigation, a record of an application for a Certificate of Lawful *Existing* Use made in 2010¹⁴ for a residential caravan site (effectively seeking to confirm as then existing the same use as is now being proposed). This application was withdrawn in February 2012. I understand from discussions with the Council that insufficient evidence was provided to support the grant of the Certificate at that time and the application was withdrawn prior to it being refused by Officers. I must therefore conclude that, when the application was made in 2010, there was insufficient evidence of unrelated residential use of the site to support the granting of a Certificate of Lawful Existing Use for (or to include) such use.

⁹ Appellant’s statement – top of P3

¹⁰ 1998 Appeal decision Notice – DOC PON05

¹³ Based on information provided from the file notes of The Council

¹⁴ Application ref 2010/2845/P - 28.5.2010

- 4.27 The pattern followed appears to be that an application is made every ten years or so in an attempt to move the use of the site in the direction of permanent residential use (1998, 2010 and now 2017).
- 4.28 The Appeal proposal is a further application (within that pattern of fairly regular applications) attempting to justify a permanent sole residential use of the site, without being subject to the rigours of consultation or the requirements of Development Plan compliance.
- 4.29 The Planning History of the site does however confirm that in 1998, the lawful use of the site was considered to be solely that of a showpersons site; at the time that the enforcement investigation concluded in 2006 this remained the case; in 2010 there was insufficient evidence to support the grant a Certificate of Lawfulness of existing use for the use now proposed.
- 4.30 It remains the case that such evidence has not been provided.

Nature of Activities Undertaken at the Site

- 4.31 All parties to the Appeal acknowledge that the site remains in use as a travelling showpersons site. Photographs of the site are attached at DOCPON06. These photographs were taken by a neighbouring resident, over an extended period of time (since 2008). The month and year when the image was taken are indicated. Additional site photographs taken in the recent months are also included DOC PON07 to provide an indication of the changing level of activity over time.
- 4.32 My involvement with the site, post-dates the submission of the Appeal and I am therefore relying on photographic evidence and records of the use of the site up to 31 July 2017 when the application was submitted. However, when I visited the site on 29 August 2018, there were a number of caravans present, of varying sizes. Interspersed with these caravans were an almost equal number of vehicles – a mixture of cars and vans (of the ‘transit’ scale) – and a number of trailers that could be used for transportation or storage. Also evident from the site boundary was a brightly coloured lorry (approx. 13.5 Ton scale) a ‘falafel’ stand and one other item visible that looked like it could have been a piece of fairground equipment.

- 4.33 I appreciate that each of these photographs, and my personal experience of the ‘activity’ at the site is a ‘snapshot in time’. The Appellant has also provided aerial photographs of the site over a period (dated: 1999, 2003, 2006, 2008, 2010, 2015) which show varying levels of occupation and activity. What is apparent upon review of the photographs of the site over time, is that the nature of activity on the site is peripatetic. Caravans come and go, vehicles come and go, fairground equipment comes and goes.
- 4.34 The physical manifestation of the site’s appearance is characterised by the presence of caravans, vehicles and equipment, the presence of fairground equipment is noticeable when it is in attendance, and not out at fairground locations.
- 4.35 As recently as December 2018, a period, which as I understand, is a busy time for Fairground activities with the large scale ‘Winter Wonderland’ located in Hyde Park from the end of November until early January, the site has seen a high level of fairground related storage and activity¹⁵.
- 4.36 All of these elements are, in my view, commensurate with a site that is being used by travelling showpersons. From my visit to the site, and viewing it from the boundary (or through historic or aerial photography) the specific nature of occupation or ownership of each of the various caravans is not apparent and I consider that clear and unambiguous evidence would be required to be provided for me to draw a conclusion that the use of the whole site was anything other than for travelling showpersons.

The Nature and Content of the CLOPUD Application Submission

- 4.37 The Appeal proposal seeks confirmation that the use of the whole site to provide pitches for 7 no. ‘Static’ Caravans for residential occupation’ would be lawful.
- 4.38 The outcome of the grant of a certificate in the terms suggested by the Appellant would be converting the site from its current peripatetic form to a fixed position of 7 static caravans regularly dispersed across the site.

¹⁵ See December 2018 photographs from Neighbouring resident –DOC PON07

4.39 As made clear above, in order to assess the suitability of the use proposed by the Appellant, it is necessary to start with an agreed position as to the lawful existing use. It is only by establishing and confirming this existing position that an assessment of the lawfulness of the proposed use can be undertaken.

4.40 I do not consider an application for a Certificate of Lawfulness of Proposed Use to be the appropriate process to confirm The Appellant's proposals. The Appellant's statement¹⁶ seems to suggest that if the 2010 application had been for a 'proposed use' rather than an 'existing use', then it would have been likely to have been successful. The inference seems to be that by applying for a Certificate of Proposed Use now, the need to establish the lawfulness of the existing use falls away. This is not the case, the burden of proof rests with the applicant in all matters pertaining to the granting of Certificates of Lawfulness¹⁷.

4.41 This test is no less relevant for a Certificate of Lawfulness for a proposed use than it is for an existing use.

4.42 To prove that 'on the balance of probabilities' the use of the site for the siting of 7 static caravans for residential occupation, it would of necessity be required that the applicant provides evidence of such use for a continuous period of 10 years preceding 31 July 2017. The Appellant is therefore required to demonstrate that the occupancy of the caravans on site has been

- For residential purposes
- by people considered 'unrelated' to showpersons or their activities
- occupied permanently, and
- for an uninterrupted period of 10 years

4.43 The evidence provided must meet the test of being '*clear and unambiguous*'. I consider that the Appellant's statement is decidedly insufficient in terms of evidence to support the established lawful use and thus the use proposed, and would therefore fail this test. In fact,

¹⁶ Ref p6/7 of the Planning Statement

¹⁷ As required by S.192 and Planning Practice Guidance Notes 006 Reference ID: 17c-006-20140306 and Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

evidence has been found in respect of the Council Tax and Ratings records¹⁸ (detailed below) which would suggest the Appellant's contention as to continuous 'unrelated' residential occupation is demonstrably *not* the case.

4.44 I will consider the tests of evidence required to support such an application in the following section of this evidence.

The Test of Evidence

4.45 The Appellant's Statement provides only a cursory commentary in support of its case. Page 6 of the Appellant's Statement contains the following:

"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."

4.46 To evidence this claim, it would be reasonable to expect some or all of the following information to be provided:

- Information on the background of the occupants and the duration of their stay on site, demonstrating a clear link between caravans being permanently occupied for residential purposes unrelated to the showpersons use of the site for the relevant continuous period of 10 years.
- Evidence of rent passing to the site owner for unrelated caravans for the relevant 10 year period.
- Council tax records/electoral roll/ or business rates records for the site that confirm the Appellant's proposition.

¹⁸ Attached at DOCPON08 and DOC PON09

- Statutory declarations from residents to confirm the number of caravans and the duration of their siting over that period of 10 years.
- Confirmation that the residents of each of these caravans were not, and have not, provided assistance to the principal ‘showpersons activities’ at the site, to demonstrate that they are indeed ‘unrelated.’

4.47 In addition, although of less weight, given that it would only attest to the presence of caravans on a site where caravans could legitimately be expected to be seen, and would provide no details of the nature of their occupation, or indeed whether they had been occupied at all, would be:

- Individual utilities connections for unrelated caravans for a continuous period of ten years from July 2007
- Individual hardstandings or ‘pitches’ for unrelated caravans for a period of ten years from July 2007

4.48 No evidence of this nature has been provided with the application or in advance of this Appeal.

4.49 The only evidence submitted by the Appellant is a series of aerial photographs of the site from 2008 – 2015.

The Available ‘Evidence’

4.50 I note that the Appellant, and the Council (subject to the reservation set out in their Statement of Case) share the view that the existing use of the site is a mix of showpersons site and an element of unrelated caravans for residential occupation. To support this, two survey plans, prepared following site visits by Council Officers have been referenced.

- 4.51 The survey plans prepared by the Council, in 2011¹⁹ and again in 2017²⁰ have been unduly relied upon as ‘evidence’ by the Appellant. Given that they represent only two specific dates since the Council’s enforcement investigations ended in 2006, I consider that they represent snapshots in time and do not present clear and unambiguous evidence of the nature of the occupation over the period. They are not sufficient to confirm ‘unrelated’, and ‘permanent’ use of caravans over the period required. If anything, the variations between the two surveys confirm the continuing peripatetic nature of activities, with the only limited exceptions being notably the caravan of Mr Dark, and one or possibly two of the caravans relating to the Abbotts occupation. These would appear to be the only consistently located caravans (comparing the hand drawn nature of the 2017 survey and the CAD drawn 2011 survey) but in any event involve use which is consistent with the definition of ‘showpersons site’ as given above.
- 4.52 I also note that of the caravans that are on site, the occupants (who are not Abbott or Hayes) are referred to in the annotations on these surveys in the main as ‘fair helper’. This includes the caravan of Mr Henryk Clarke who also appears to have been on the site in the period between the 2011 and 2017 surveys.
- 4.53 While fairground activities may or may not be various occupants’ principal employment (this is yet to be shown), the assistance of a number of them with the activities of the travelling showpersons site over time (eg. Mssrs Clarke and Dark) could confirm their reason for being located on the site, and their presence would not, in my view, be anomalous or out of character with the travelling showpersons use of the site.
- 4.54 While it is for the Appellant to provide evidence to support their case (not the Council or Rule 6 parties to prove the alternative) a review of the Council Tax records indicates that there are currently only 2 caravans registered on the site for Council Tax. There are 7 entries for Council Tax on the Appeal site, listed as Caravans 1-7 and with the exception of ‘Caravan 3’ and ‘Caravan 4’, entries have been deleted for all other caravans registered on the site:

¹⁹ Attached at DOC PON10

²⁰ Attached at DOC PON11

Caravan 1 Deleted 10/04/2014
Caravan 2 Deleted 17/03/2017
Caravan 3 Deleted 2008 and Rated Band A from 01/02/2014
Caravans 4 and 5 Rated Band A from 05/05/2008*
Caravan 5* Deleted 01/06/2008
Caravan 6 Deleted 10/04/2014
Caravan 7 Deleted 10/04/2014

- 4.55 Caravan 3 is registered to Mr Robert Dark, and caravan 4/5, which are banded together by the VOA (as one is considered an 'appurtenance' to the other), is registered to Mrs Olga Abbott. The Council have indicated that 'Caravan 7' was deleted from the records as it was only used for storage.
- 4.56 These Council Tax records are very unclear as to the occupation of the site, and certainly do not provide clear and unambiguous evidence to substantiate the presence of a significant number of permanent 'unrelated' residential caravans on the site over the 10 year period from 2007. In addition, if anything, residential use appears to have declined over the period rather than increased.
- 4.57 Further, the whole site is rated as 'caravan pitch and premises' for Business Rates. These records were updated as recently as 2017. This description would appear consistent with the showpersons use of the site being considered a mix of activities - in addition to solely caravans, or to the exclusion of other activities - as set out in the definitions above.
- 4.58 The photographic record provided at DOC PON06 would also confirm the varied nature of occupation over time. As recently as July 2018, there were substantial pieces of fairground equipment on the site, and over time, varying pieces of equipment, are present, moved on site or removed from site as can be seen from the photographic evidence.
- 4.59 Similarly, the caravans in the south east corner of the site change in number, location and the caravans themselves are different, suggesting they have been moved on and off or around the site. All of the above underlines the peripatetic nature of the existing use, with the site being used in a manner that one might expect from a travelling showpersons site over the course of the last ten years.

- 4.60 When the Council's Survey drawings are considered it should also be noted that there are a number of caravans that are identified as empty at the time of the surveys. The presence of an empty caravan which is stored on site provides no evidence that it, or any of those caravans are, or have been continuously used for residential occupation. I would however expect showpersons to retain and store empty caravans for use at fairgrounds and I would consider it reasonable to see empty caravans on a showpersons site. The presence of vacant caravans in the site survey, together with the Council tax record deletion (due to a caravan being used for non-residential purposes), leads me to believe that one cannot draw any correlation between the presence of caravans on site and their permanent occupation for residential purposes by 'unrelated' persons or otherwise, and I have seen no evidence that would lead me to a different conclusion.
- 4.61 I am of the view that the Appellant has failed to provide clear and unambiguous evidence to substantiate permanent and unrelated occupation (whether or not residential) of caravans on the site that are separate and distinct from the travelling showpersons use of the site, and indeed, the Council Tax records would seem to point towards a position that is contrary to the assertion of the Appellant.
- 4.62 I do not therefore agree with the position advocated by the Appellant, and referred to by the Council (subject to their reservation included in their Statement of Case), that the site is a mix of 'travelling showpersons site' *plus* a number of caravans occupied for residential purposes by 'unrelated' persons. The evidence put forward simply does not support the contention that the site has an established lawful residential use that is unrelated to the travelling showpersons use. When subjected to proper scrutiny, I do not believe that the Appellant's application was supported by sufficient '*clear and unambiguous*' information to conclude that '*on the balance of probabilities*²¹ there have been any caravans in occupation by persons other than those associated with the showpersons activities on the site for a continuous period of 10 years, from 30 July 2007 to the time that the application for a Certificate was submitted on 31 July 2017.

²¹ As required by Planning Practice Guidance

- 4.63 If some unrelated residential use can be shown, cogent evidence would need to be provided to demonstrate that such use has been anything other than *de minimis* and fluctuating.

Conclusions on the Lawful Existing Use

- 4.64 In view of the ambiguous and limited nature of the available evidence to clarify who, if anyone, may be residing inside the varying number of caravans that are present on the site at any particular time, I must conclude that the use of the site would be commensurate with what I would expect a showpersons site to comprise²².
- 4.65 As defined by guidance and case law, this sui generis use encompasses various mixed activities including winter quarters, storage, accommodation of vehicles and some, often peripatetic, residential uses.
- 4.66 Within the planning unit as a whole, if there have been some 'unrelated' caravans in residential occupation, for intermittent periods of time, such uses should be considered 'de minimis', to the consideration of the use of the whole site. I have however seen no evidence that would confirm²⁴ that there have been any caravans occupied continuously for the requisite 10 year period by persons 'unrelated' to the showpersons or fairground activities.
- 4.67 I am aware that my view and that of both the Appellant, and the Council (subject to the reservation set out in their Statement of Case) diverge in terms of the lawful existing use of the site. I have based my assessment solely on my view of the evidence that has been provided in support of this application and Appeal, having visited the site and reviewed various photographic records of the site over time and considered available planning history, site surveys and records held by the Council.

²² Having reviewed the definitions set out in paras 4.20-4.33 of this Proof

²⁴ On the balance of probabilities

5.0 A MATERIAL CHANGE OF USE

- 5.1 The Appeal Proposal seeks confirmation that the use of the whole site to provide pitches for 7 no. 'Static' Caravans for residential use would be lawful.
- 5.2 As referred to above, my view is that the lawful existing use of the site is as a showpersons site. The Appellant and the Council (subject to the reservation set out in their Statement of Case) consider the site to be in mixed-use, incorporating a showpersons site and an unrelated residential caravan site. The City disagrees with this assessment. Nevertheless and notwithstanding this difference of view, I have also considered whether, in the instance of the site being considered a mix of showpersons and unrelated caravan site use, a material change of use would arise from the Appellant's proposal.
- 5.3 I consider that under both assessments the change of use proposed by the Appellant would constitute a material change of use requiring planning permission and I deal with the evidence below on the basis of both the City's and the Appellant's contention relating to the lawful existing use of the site.

Change of Use from Showpersons Site to 7 Static Caravans for Residential Use

- 5.4 Any assessment of whether a change of use would be material is a judgement of fact and degree, based on an assessment of the impact of the proposed use on the character of the site as a whole and, where relevant, any off-site impacts.
- 5.5 As set out in section 4 of my evidence, the High Court has considered the issue of whether a showpersons site is a separate and distinct use in planning terms and concluded that this may indeed be the case. In *Winchester City Council v SSCLG* [2013] EWHC 101 (Admin), the Judge concluded that there is a distinction between showpersons sites and a residential caravan site which is significant in planning terms. I agree with this assessment.
- 5.6 It is my view that the planning unit remains in use wholly as a showpersons site. The change sought by the Appellant would materially change this use by removing the potential for the site to be used for the mix of activities which comprise the various elements of a showpersons site and to replace them with a fixed arrangement of static

caravans across the whole site. This would involve a notable change in character from the peripatetic activity, typical of the character of the use at present and which would, in my view have a material impact on the relationship of this site with the Heath with the remainder of the Hampstead Conservation Area at the Vale of Health.

- 5.7 The character of the existing use as outlined in previous sections is defined by its peripatetic nature. Change over time is part of this character. The Appellant is seeking a Certificate of Lawfulness that, if granted, would eliminate this element of change in the pattern and mix of uses that are at the heart of a travelling showpersons site. The use of the term '*static*' in describing the caravans to be located would seem the antithesis of the '*travelling*' adjective that has been applied to the description of the site for the last 50 years.
- 5.8 The '*unrelated*' nature of the residential occupation which would characterise the proposed use would also distance the use from the historical *showpersons use*. These elements are fundamental, and undisputed, to how the nature of the site has been defined for a period both during, and far exceeding, the 10 years prior to the submission of the Application and clearly involve a material change.
- 5.9 The 'formalising' of the site's appearance through the establishment of essentially a residential layout would have significant effects on the character and appearance of the Conservation Area within which it is located and a detrimental impact on the open character of the site and the Heath – these considerations are enshrined in the planning policy designations of the site. These impacts would be a key consideration if a full planning application were to be submitted, and it therefore follows that a change of use which affects these elements of the site's character in a meaningful way should be considered 'material' in assessing the change of use proposed.
- 5.10 I should also address the suggestion by the Appellant that there is a declining use of the site for fairground activities²⁵. First the lawful use of the site is not tied to the individual occupier but enures for the benefit of the land. Secondly, from my review of the site photographs over time, there is no evidence that the use of the site for fairground related activities has diminished to a point where it can now be considered

²⁵ Appellant's Statement bottom of p7

an insignificant part of the activities on the site. By contrast, what evidence there is of residential uses appear to show these to have declined (see Council Tax evidence).

- 5.11 I therefore conclude that the change of use from a showpersons site to an ‘unrelated’ caravan site would have material impacts.

Change of use from a mixed-use of Showpersons site and Residential Caravan Site

- 5.12 The Appellant’s proposition is that the site is a mix of a showpersons use and some unrelated residential caravans. For the reasons set out above, I do not consider that this is the lawful use of the site. The Appellant contends that were the showpersons use to cease on site, the unrelated residential caravan use could subsume the whole of the planning unit and this would not represent a material change of use.
- 5.13 In this regard, I agree with the Council’s assessment, set out in para 5.7 of their Statement of Case, that this would constitute a material change of use.
- 5.14 If an unrelated residential caravan use exists lawfully at all, it is certainly not a dominant use or a defining part of the character of the site at present. It is certainly not sufficient in scale, character or intensity to be considered the primary use of the site, and indeed, all parties agree that showpersons use is the principal use on the site.
- 5.15 While it may be legitimate in planning terms to cease an element of a mixed use without enforcement action being taken (and whether such action would be taken would be a matter of planning judgement in all the circumstances of the case), it certainly does not follow that the use that remains can subsume the remainder of the site without a material change of use occurring. This judgement must be a matter of fact and degree based on the nature, character and intensity of the remaining use and its impact on the planning unit as a whole.
- 5.16 The proposed change, to a site solely for static caravans for permanent residential occupation, would in my view introduce a fixed pattern of occupation not currently present on the site. Any ‘unrelated’ caravans on the site are certainly informally sited

and disparately located currently, and coalescing this activity into a formal arrangement would in my view represent a significant change to the character of the site.

- 5.17 The principal impacts would be on the character and appearance of the site; however, it would also likely manifest as a change in the daily comings and goings to the site in terms of vehicular movements and deliveries particularly in the morning and pm peak, consistent with permanent formal residential occupation. Visitor parking arrangements and servicing would all be materially different from the peripatetic nature of the existing use.
- 5.18 In respect of off-site impacts, the site's character and contribution to the Conservation Area within which it is located would also permanently change. The Vale of Health was included within the Hampstead Conservation Area when the Conservation Area was originally designated in 1968. At that time, the Appeal site was in use as a travelling showpersons site. A key reason for the designation of the Conservation Area, was its proximity to the 'unique open space of Hampstead Heath and its integration with the village on its northern side'²⁶. The Conservation Area Statement acknowledges 'the buffer' that the open nature of the private open spaces around The Vale of Health provide to the Heath²⁷. As a significant Private Open Space, the use proposed by the Appellant would permanently erode this buffer effect in this location, altering the character in a manner detrimental to the Heath.
- 5.19 The Appeal Inspector in 1998 described the benefit, in planning terms, of having a 'soft edge' to the Heath, and that the peripatetic nature of activity on the site ensured that this remained the case. The peripatetic nature of the uses on site, provides this 'soft edge' to the Heath, consistent with the designation of the site as MOL, and as Private Open Space. The use proposed would formalise and fix a permanent residential presence on the site, conferring domesticity by virtue of the siting of the units proposed, the establishment of residential curtilages and road layout. The type of 'caravan' suggested by the Appellant for location on this site, which is comparable in appearance to a residential bungalow, also conveys a domestic appearance, bringing the edge of the settlement of the Vale of Health further into the Heath.

²⁶ Extract from Hampstead Conservation Area Statement DOC PON12

²⁷ Extract from Hampstead Conservation Area Statement DOC PON12

- 5.20 The erosion of the existing open character, emphasised during periods where the Appeal site is largely empty, would represent a significant change to the character of the site were it to be replaced by a formalised 'residential' layout. There are also a number of footpaths on the Heath that run along the boundary of the Appeal site. A change in the nature of the use to the permanent residential presence proposed by the Appellant would materially alter the views from those footpaths towards the Vale of Health from the Heath.
- 5.21 As a result, the Appellant's proposed use seems to me to fail to recognise the material impact of the proposals on the planning unit as a whole.
- 5.22 For all of the above reasons, whether the Inspector accepts my view on the lawful use of the planning unit, or the proposition of the Appellant and the Council (subject to the reservation included in their Statement of Case), my view remains that the proposal would constitute a material change of use that should be properly assessed through the normal procedures and policy tests associated with an application for full planning permission.

6.0 OPERATIONAL DEVELOPMENT

6.1 Notwithstanding the City's position in relation to the use of the site as set out above, the indicative proposals submitted by the Appellant would also seem to require elements of operational development – creation of hardstandings, brick plinths and works associated with access roads and establishing residential curtilages.

6.2 It would appear that these elements would constitute operational development requiring planning permission consistent with the definition of development contained in S.55 of the town and Country Planning Act 1990 (as amended) It is not considered that these elements would benefit from permitted development rights.

6.3 As set out in S.55 of the Town and Country Planning Act 1990 (as amended) 'Development' includes, *inter alia* :

- *building operations (eg structural alterations, construction, rebuilding, most demolition);*
- *material changes of use of land and buildings;*
- *engineering operations (eg groundworks);*
- *other operations normally undertaken by a person carrying on a business as a builder.*

6.4 The works described above, which are shown on the plans submitted with the Appellant's Application would in my view include building and engineering operations as defined above.

6.5 The requirements of the General Development Management Procedure Order are such that the application for a certificate should include sufficient detail upon which to make a judgement as to whether the use or development proposed would be considered lawful²⁸. In my view, the Application did not include sufficient detail relating

²⁸ Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

to the operational development required to enable this judgement to be made and it would therefore have been reasonable to refuse the Certificate Application on these grounds alone, or in this instance to dismiss this Appeal. In the event, the Inspector is asked in this instance to dismiss the Appeal on these grounds in addition to the grounds provided in the proof above.

7.0 CONCLUSION

7.1 My conclusions take the form of my Summary Proof.

7.2 For all of the above reasons, I would respectfully suggest that the Certificate of Lawfulness cannot be granted for the use and development proposed. The Inspector is therefore respectfully requested to dismiss this appeal.