

**PLANNING SERVICES**

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

**Charles Thuaire**  
**PROOF OF EVIDENCE**  
**FOR PUBLIC INQUIRY COMMENCING ON 12th February 2019**

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**APPEAL SITE**

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

**APPELLANT**

Knightsbridge Parks LLP

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**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'.

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**COUNCIL REFERENCE:** 2017/4346/P

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

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## **INTRODUCTION**

- i. I am Charles Thuaire. I hold a BA (Hons) in Geography and a Diploma in Town Planning, and I am a Member of the Royal Town Planning Institute. I have worked for the Council's Planning Service of the Environment Department for over 30 years on a variety of development control, local plan & implementation, and policy issues. For the last 20 years, I have been Senior Planner in the Development Management team doing solely development control work on applications and appeals, as well as supervision and managerial duties; for much that time, I covered the area of Hampstead and Highgate. I have considerable experience of dealing with relatively complex proposals and their associated issues of landuse policy, conservation and design. I am very familiar with the environs of Hampstead, Vale of Health and Hampstead Heath and the planning issues facing these areas.
  
- ii. I have been involved with this particular site since 1997 when I was the case officer for a previous application for its redevelopment by the current site owners (the Abbott family); as the result of an appeal, I consequently appeared as the Council's planning witness at a public inquiry in 1998. I was also the case officer for the previous Certificate of Lawfulness application for this site in 2010.

### **Declaration**

The evidence which I have prepared and provide for this appeal (reference APP/X5210/X/18/3198526) in this Proof of Evidence is true and I confirm that the opinions expressed are my true and professional opinions.

### **iii. STRUCTURE OF THIS PROOF**

My evidence will be divided into 5 sections:

In Section 1 (Site and Surroundings) I shall describe the site and its context.

In Section 2 (Application Details) I will summarise the application and the

Council's consultation programme.

In Section 3 (Relevant Planning History) I will summarise the planning history of the site.

In Section 4 (Planning Policy Framework) I will explain the relevant policy planning policies.

In Section 5 (Assessment) I will discuss the Council's assessment of the application and its conclusions.

## **1.0 SITE AND SURROUNDINGS**

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 (see site plan in Appendix 1). 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 and is in separate ownership and unconnected to the appeal site.

1.2 The north site has been 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 other fairground workers and other residents. The site contains a number of different caravans, 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 cul-de-sac roadway of Vale of Health, opposite the south fairground site. It has a toilet block and connections to water, sewerage, mains electricity and telephones. The history of its usage is discussed more in Section 5 on Assessment 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).

## **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 (CLOPUD). The application, reference 2017/4346/P, was received on 31st July 2017 and registered on 11<sup>th</sup> August 2017 as an application for 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 Nevertheless, 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 officers' Delegated Report (section titled 'Consultations') which is in Appendix 3. The responses have already been forwarded to the Planning Inspectorate.

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

2.5 The application was reported for a decision under officers' delegated powers (see officers' Delegated Report in Appendix 3). 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 20<sup>th</sup> July 2018 (see Appendix 2). 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 There has never been any planning permission granted for the existing use of the site and there are no planning conditions controlling the use of the site.
- 3.2 On 12.9.97 the Council advised by letter that, had an appeal not been made to the SoS (against non-determination), it would have refused planning permission for redevelopment by a block of 15 flats plus carparking, ref PW9702255.
- 3.3 On 7.5.98 the above appeal (heard at a public inquiry) was dismissed and planning permission was refused, ref T/APP/X5210/A/97/283311/P4.
- 3.4 On 12.9.97 planning permission was refused for redevelopment by 8 houses and a block of 8 flats plus carparking, ref PW9702438.
- 3.5 In 2004, following a neighbour complaint alleging unauthorised use of the site by other caravans, a formal enforcement investigation (ref EN04/0265) commenced. The case was closed later in March 2006 after the unauthorised uses had ceased and enforcement officers had concluded that there was no breach of planning control.
- 3.6 On 28.5.10 an application was submitted by the current owners (Abbotts) for a Certificate of Lawfulness for Existing Use or Development (CLEUD) as a residential caravan site, ref 2010/2845/P. Following the consultation and assessment process, officers advised the agents that they could not approve

the application and thus it was withdrawn by the agents on 22.2.12.

#### **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 ASSESSMENT**

5.1 The main issues are to:

(i) establish what the existing and lawful use of the site is, based on the last 10 years of usage; and

(ii) assess whether the proposed use for 7 residential static caravans would constitute a material change of use from that existing lawful use.

My conclusion as discussed below is that the existing lawful use is an overall mixed use comprising a 'showpersons site' with other residential caravans , and that the proposed use of the site for 7 static residential caravans would constitute a material change of use from this existing lawful use.



5.2 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”.

5.3 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.

5.4 The applicants are Knightsbridge Parks LLP who have an option to buy the site from the Abbots 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.

5.5 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.

5.6 It should be noted that the site’s usage and the various applications for its use (notably the 1997 ones for redevelopment, the withdrawn 2010 application for a Certificate of Lawfulness for an existing use, and the current one for a proposed use) have attracted much interest and concern from local people, groups and

organisations (notably the City of London who manage the adjoining Heath) who have also provided evidence on the site's usage.

### Existing Use

5.7 The use of the site has fluctuated over time in terms of numbers and types of people and structures accommodated here. It is firstly necessary to establish the lawful use of the site, which is the overall use that has existed continuously here over the last 10 years before submission of the appealed Certificate of Lawfulness application in July 2017, ie. since 2007. The use of the site has been considered and recorded by Council officers at various times in 1997, 2004, 2010 and 2017. The 'planning unit' in question here relates to the whole site as shown on the OS site plan (see Appendix 1) and no evidence has been provided to show that it has been split up into separate and distinct constituent parts over the last 10 years.

#### *1997 planning application*

5.8 The first time that the Council considered the lawful use of the site was in 1997, in relation to a planning application for the redevelopment of the site and a subsequent appeal against the Council's decision. This is a useful starting point in establishing the site's original use. The Council's proof of evidence for the public inquiry dated 17.2.98 (see Appendix 4) stated in its para 2.2 that the Abbott family lived on the site in caravans and used it for storage and maintenance of fairground equipment as well as occasional fairground purposes on 3 Bank Holidays a year. The proof stated that the site had several caravans,

lorries, trailers, fairground stalls and rides, refreshment kiosks, generator trucks and cars, plus toilets. . The Council thus concluded (in para 5.4 of that proof) that “the established and lawful use of the site is as a “Showpeoples’ site” as defined by DoE Circular 22/91’ with mixed residential/storage and ‘winter quarters’. The appellants were members of the Showmens Guild and had used the site continuously since the war for this purpose. The site had a mixed use incorporating living accommodation, equipment repair and storage, and occasional fairground use, where no one particular use dominates. 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.

5.9 The appeal Inspector in para 10 of his decision dated 7.5.98 (see Appendix 5) agreed that ‘the lawful use is probably as winter quarters, as described in Circular 22/91 on travelling showpeople. This is a ‘Sui Generis’ use...’.

#### *Policy guidance*

5.10 The DoE Circular 22/91 was since superseded by Circular 04/07 and then by ‘Planning policy guidance for traveller sites’ (revised August 2015) (both attached in Appendixes 16 and 17). The latter states that ‘ “travelling showpeople” means- Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family’s or dependants’ more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers

as defined above. The guidance further explains that a “plot” means a pitch on a “travelling showpeople” site (often called a “yard”) and ‘such mixed-use plots... may/will need to incorporate space or to be split to allow for the storage of equipment’.

5.11 The current Camden Local Plan 2017 explains (in para 3.286 of the chapter on Accommodation for travellers- see extract in Appendix 15) the Government’s definitions for travellers, gypsies and travelling showpeople, as discussed above, and states (in para 3.287) that there is a site for travelling showpeople at the North Fairground Site at the Vale of Health.

#### *2004 enforcement investigation*

5.12 The next analysis of the site’s use was in 2004-2006 as part of an enforcement investigation (ref EN04/0265), following receipt of a neighbour complaint about intensification of use of the site including more caravans. This information is very useful as it indicates the site’s usage just before 2007, the start of the 10 year period that needs to be analysed to establish the site’s current lawful use. A Planning Contravention Notice issued in July 2004 resulted in a landuse survey and a list of 15 residents being supplied; these were later updated in October 2005 and usefully showed the nature of occupation here (see plan and list of residents in Appendix 6). The final plan shows that there were 8 Abbott caravans (with 5 retired dependants), 1 Abbott caravan temporarily away, 2 Abbott kiosks, 1 ‘fairground maintenance shed’, 1 lorry (for stalls), 2 vans and 2 lorry generators; 9 other caravans. It was not recorded how or by whom these latter ‘other caravans’ were occupied or which ones were vacant, except that it

was noted that one was occupied/used by Henrik Clarke (who was a mechanic and also helped out at fairs by repairing equipment) and another by James McGuigan (who was a gatekeeper and circus artist). No information was given about where these 2 caravans were on the plan. 5 other caravans and a double decker bus accommodating 13 residents, who were listed as evident in July 2004 when the investigation started, had moved off by October 2005.

5.13 Enforcement officers concluded in February 2006, after their final site visit (see the enforcement delegated report of 20.10.05 and letter to Abbotts dated 7.3.06, in Appendices 7 & 8), that there was no breach of planning control as the use continued to be a showpersons' site wintering grounds, with fluctuating numbers of travelling showpeople or related to fairgrounds or part-time workers (eg. a mechanic). The case was thus closed in March 2006.

5.14 This fluid nature of occupation was evident as part of the assessment of a Certificate of Lawfulness application in 2010 (discussed further in paras 5.15-18 below). It was noted by the case officer (see my site visit notes 8.12.11 in Appendix 10) that one of the owners, Charlie Abbott (now deceased), lived there and ran it as a showpersons'/ caravan site from 1980, with no restrictions on who actually lived there. Thus as noted above, in 2004, the site's use intensified as more caravans moved onto the site and paid rent to the owner. Following a neighbour complaint about this intensification of the site, and the ensuing enforcement investigation, some caravans and the bus moved off the site; these were apparently replaced by similar numbers of residents but staying for shorter periods, according to the enforcement officer's report in 2005 (see appendix 7).

*2010 Certificate of Lawfulness application*

5.15 In 2010, the assessment of a Certificate of Lawfulness application for an existing residential use involved interviews with the applicants, land use surveys and analysis of evidence from neighbours and Planning Aid for London, as well as affidavits from caravan residents supplied with the application. Numerous objections were received from local residents and groups, with photographic evidence of showmen's lorries and fairground equipment stored on the site. More detail on the history and evidence of usage in relation to this Certificate is summarised in the case officer's notes dated 8.12.11 (attached in Appendix 10). In particular, it was noted that some evidence in the applicants' affidavits appeared to be unreliable, inaccurate and contradictory. Subsequent interviews with one of the applicants (Charlie Abbott) and his son (Charles senior) showed that these 2 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. They stated it was not just a residential caravan site. At that time, Charlie Abbott and his son Charles senior and wife were retired and lived there, along with his sister Pauline and daughter Charlotte; 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.

5.16 The land use survey was carried out in July 2010, and updated in March 2011, incorporating evidence and the base plan provided by the applicant's agents. It is attached as a coloured site plan in Appendix 9. This is accompanied by a list of residents and/or caravan owners and their occupations provided by the

applicants and agents. It shows the following numbers of people and mobile items:

Abbotts- 5 caravans for 5 retired dependants, 4 caravans for 2 active showpeople (temporarily away at fairs); 2 caravans used for residential storage, 1 lorry used for fairground maintenance, 4 areas of equipment storage in winter only (temporarily away at fairs)

= total 7 showpeople residents, 16 items;

Others- 5 caravans for 5 fairworkers/helpers; 4 caravans for 4 unrelated people, 3 empty unrelated caravans

= total 9 other residents, 12 items.

5.17 Thus the showpeople and fair workers totalled 12 residents (in 14 caravans) and the other unrelated people totalled 4 residents (in 7 caravans). However, in reviewing the list of residents in Appendix 9, it is noted that one of the empty caravans was used by someone (John Edwards) who, although not helping out at the Abbotts' fairs, worked at a fairground and fetes elsewhere, thus he could be regarded as having a connection with the showpeople.

5.18 Officers concluded in 2011 that, on the balance of probability of how the site had been used over the last 10 years since 2000 (based on a measure of numbers of residents and numbers of caravans or units on the site), the site was 'most probably a mixed use of (a) showpersons' site with numerous dependants 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' (this is a quote from the email

dated 20.1.12 to the agents - see Appendix 11).

5.19 Officers advised the agents of this conclusion and that accordingly the Certificate would have to be refused (see email dated 20.1.12 in Appendix 11). The agents later withdrew the application on 22.2.12; they agreed with officers that there was insufficient unambiguous evidence to clearly show that the site was purely in residential use (see their letter also in Appendix 11).

5.20 It is acknowledged that this conclusion on a mixed landuse is slightly different from that reached by enforcement officers in 2006, whereby they considered the site to be solely a showpersons site. In contrast, the case officer in 2010 considered there was more of a mix of uses. There was, and continues to be, a degree of variation in the exact mix, depending on times, numbers and occupations of 'unrelated residents' occupying part of the site. On a closer inspection of the enforcement file with landuse survey and interview notes by enforcement officers (see list of residents in Appendix 6), it is clear that in 2004 there were residents who, according to their listed occupations, were not all connected to fairground activities in a fulltime capacity or were only loosely associated with them. The list records that, out of 15 residents, there were 4 circus performers, 2 artists, a musician, a dancer and a mechanic, but 6 others seem to be totally unrelated. However by 2006 as part of the enforcement investigation, most of these had left with only 2 fair helpers remaining (as named in para 5.12 above) but it seemed that others had moved onto the site whose names and occupations are not recorded. Nevertheless it was concluded that the majority of the site was occupied by the Abbotts' caravans and their fairground equipment, plus some fairground helpers/workers.



5.21 This demonstrates the fluctuating nature of the use of the site whereby the numbers and types of non-Abbott caravan occupants constantly varied over time, so that the intensity and nature of their site residence changed over the years. Nevertheless the showpersons use has always been the predominant use here, with any unrelated residential use being a much less significant albeit variable part of an overall mix of uses on the site. It is also clear that neither the whole site nor any separate part of it was ever a residential caravan site. It should be noted (as discussed more in para 5.48 below) that the City of London takes a slightly different position from the Council in that it regards the existing lawful use of the site to be entirely a Sui Generis showpersons use.

5.22 In 2010, as part of my assessment of a Certificate of Lawfulness application, I considered that the number of unknown residential caravans witnessed on site was sufficient to result in a mixed use that was made up of the predominant showpersons use but also incorporated a residential element which was more than just *de minimis* or ancillary in function to the showpersons use. It is appreciated that different officers could have reached different conclusions about the exact nature of the mixed use here and that the view might have been taken that, even though some residential caravans were occupied by persons other than showpeople (or connected with fairground work), the function of renting them out was to facilitate the continued use of the site as a showpersons site. But whichever view is correct, the survey plans of 2006, 2010 and 2017 show that the location of specific residential caravans never remained constant and there has never been a separate residential element on the site which was physically identifiable and distinct from the predominant 'showpersons site' use.

It should be emphasised that this site has continuously remained as one planning unit and it has never been clearly subdivided into separate plots with distinctly different defined uses. In particular, a separate residential use has never become established on any part of the site; such separate residential use as there has been has fluctuated over time and across the site (in terms of intensity and location).

*2017 Certificate of Lawfulness application*

5.23 In November 2017, as part of the assessment of the appealed Certificate application, another land use survey was carried out with evidence on usage provided by Charles junior Abbott. This is attached as a coloured site plan in Appendix 12. It shows the following numbers of people and mobile items:

Hayes- 4 caravans for 2-4 active showpeople;

Abbotts- 1 caravan for 2 retired dependants, 3 caravans for 2 active showpeople (temporarily away at fairs at time of survey); 6 caravans/lorries used for residential or fairground storage; 14 items of equipment/fair rides/kiosks  
= total 8 showpeople residents, 28 items;

Others- 1 caravan plus van for 1 fairhelper (John Edwards); 4 caravans for 4 fairworkers (temporarily here for Winter Wonderland in November); 2 caravans plus Landrover for 2 other people (Robert Dark and Henrik Clarke, who may also sometimes help out at fairs), 7 other unknown or empty caravans  
= total 7-14 other residents, 16 items.

5.24 Thus, counting those actually present at the time of the survey, the showpeople

and fair workers totalled 9 residents (in 8 caravans) and the other people totalled 2-9 residents (in 9 caravans). It should be noted that this is based on a survey on one date on 10<sup>th</sup> November- the 2 Winter Wonderland caravans were soon to be added to by another 2 caravans; later they would all be replaced in January by showpersons' caravans and equipment on the plots of Charles junior and Cy Abbott. Also no information was given as to how many 'unrelated' caravans were actually occupied or by whom.

5.25 The survey plan shows that there are some consistent elements with the previous 2010 survey. For instance, in the same locations as before are the retired dependents (Charles senior and Olga Abbott), their equipment storage lorry, and an unrelated resident (Robert Dark); also, in different locations from 2010, are a fair helper (John Edwards) and the mechanic (Henrik Clark). However the other caravans, both those of Abbotts and of unrelated residents, appear to be in different locations and configurations.

5.26 This landuse survey was accepted as accurate by the appellant's agent (see his email dated 29.1.18- attached in Appendix 13). Moreover the agent in his planning statement does not disagree with the Council's previous conclusion in 2011, in relation to the previous Certificate of Lawfulness, 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 and other caravans.

5.27 As part of my site visit interview with one of the owners (Charles Abbott junior) the following was noted regarding the current use (see my site visit notes in Appendix 12). 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 January to March before going elsewhere to run fairs until November. Some fairground workers resident on the site at that time were also working during winter months at Hyde Park Winter Wonderland fair. The Abbotts have apparently also recently bought a plot in Royston in Hertfordshire to store large equipment as the Vale of Health site is too small and inconvenient to accommodate this. This is evident by the absence on the 2017 survey plan of the 4 large equipment 'blocks' shown previously on the 2011 survey plan. My 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 formed a separate showpersons' family (the Hayes) and now occupy the northeast corner of the site. This is a new element since the last survey in 2011.

5.28 The interview with Charles Abbott junior also gave some limited information about the 'unrelated residents' caravans shown on my plan. 2 caravans were occupied and used by Robert Dark and Henrik Clark (plus his Landrover tow truck), both of whom may also sometimes help out at fairs; 7 caravans were apparently used casually by unrelated residents through the year but no evidence was given about their names, occupations or duration of stays- it is quite possible that some caravans were vacant at the time of my visit or that that occupiers may have had connections to showpeople/fair work.

5.29 Officers consider that the usage of the site in 2017 had not materially changed since the time of the last survey in 2011. No further surveys have been since carried out to establish any subsequent changes. 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 form an additional showpersons' area. It is acknowledged that the precise usage of the site, in terms of numbers and positions of residents and mobile structures, fluctuates over the year so that fairworkers and showpeople come and go at different times and reuse each other's plots. This is an intrinsic feature of such sites. Hence the landuse surveys can only represent an indicative 'snapshot' at any one point in time. According to objections by local residents and groups (see consultation responses to application, summarised in report in Appendix 3), 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.

5.30 In terms of numbers of people and caravans actually occupying the site at the time of the survey in November 2017, 8 caravans had 9 people involved with showpeople/fairground use and 9 caravans had unrelated residents or were empty. 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.

5.31 In terms of site area occupation in 2017, the landuse survey plan (see Appendix 12) clearly and graphically demonstrates by colour notation that the site has a genuine mixed use, with two thirds or more 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 other 'unrelated' residents' caravans, used casually through the year (although it was noted that 2 of these residents may sometimes help out at fairs). No information was provided by the owners about who occupied these 'unrelated' caravans, what their connection was with the showpeople, and whether any caravans were permanently vacant. The number of 9 such 'unrelated' residential caravans is broadly unchanged from 2011 when 7 were evident at the survey; however their positions are very different (and it is possible the nature of their occupation might be also).

5.32 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 numerous items are probably the same as the 4 larger items of equipment identified in July 2010 (annotated 'winter equipment storage Nov-Mar'), even though they were temporarily not there during the summer.

5.34 It is evident from the various landuse survey plans from 2005 that the Abbotts' caravans tended to be located on the northern and western boundaries of the site, whereas the unrelated residents tended to be concentrated in the southeast corner. However it should be noted that, apart from one caravan (Robert Dark's in 2010 and 2017), none of these unrelated residential caravans

were consistent in their exact location, number and duration. Thus it cannot be argued that a distinct residential enclave has become established in one discrete area and then continuously existed for 10 years in an identifiable manner so as to create a separate residential unit on the site.

#### *Council tax records*

5.35 Furthermore the Council tax records do not clearly demonstrate that there has been a continuous and distinct occupation of part of the site by residential caravans. The records (see emails from Council tax officers in Appendix 14) show that there are seven entries for the site registered on the site for Council Tax, listed as Caravans 1 to 7. Only three continue to be rated today- no. 3 occupied by Robert Dark and no. 4 (with its appurtenance no.5) occupied by Olga Abbott. No. 2 was occupied by David Kadwell (an unrelated resident recorded in my 2010 landuse survey) but no longer exists and was removed from rating in 2017; the other 3 entries were deleted in 2014. The whole site (named as Showpersons site, Vale of Health) is also rated for Business Rates which would suggest that the use of the site is either a mixed use, with the showpersons use being the predominant use which fluctuates across the whole site, or a solely showpersons use across the whole site; it certainly suggests the site as a whole is not in residential use.

#### *Conclusions on existing use*

5.36 In conclusion, on the basis of the evidence from Council officer surveys in 2005, 2011 and 2017, the Council considers that the site still has a genuine mixed use

of (a) predominantly a showpersons' site with some dependants and some fair workers and of (b) other additional mostly unrelated residential caravans. As with the previous withdrawn Certificate, the Council still does not agree that the site has ever been used as, or has now become, a residential caravan site with ancillary showpersons' winter quarters and storage. It is concluded 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.

5.37 The appellant's agent has not provided any evidence to the contrary to prove that the site has been lawfully used mainly or solely for residential caravan purposes. Instead he has agreed (by email dated 23.1.18- attached in Appendix 13) that 'the site has a mixed use and that this mixed use has been established for more than ten years'.

### Proposed Use

5.38 The appellant's agent 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 he argues that no permission would be required to change use of



all caravans to an entirely residential usage. It is noted that he does not refer to a proposed use for Class C3 purposes, and it is assumed that this residential caravan use is also a Sui Generis use.

*Nature of 'residential caravans'*

5.39 The definition of a 'caravan' (as provided by the agent in his email dated 23.1.18- see Appendix 13) 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'.

5.40 The 1960 Act also states that 'a site licence shall not be required for the use of land as a caravan site by a traveling showman who is a member of an organization of travelling showmen which holds for the time being a certificate....and who is at the time traveling for the purposes of his business or who has taken up winter quarters on the land with his equipment for some

period...' (between October and March). Officers are not aware that any such licences have been applied for or issued for any of the caravans on the site either in the past or currently there.

5.41 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.

5.42 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 the Council disagrees that the change from the currently mixed use to an entirely residential use would not be materially different.

*Nature of 'showpersons' use*

5.43 As explained in paras 5.29-34 above, it is considered that the showpersons' use is an integral part of the overall mixed use of the site and indeed is the predominant use here. It is not an ancillary element to a primary residential use here. Moreover the storage of equipment onsite is an integral part of this

showpersons' use. It is acknowledged that the precise nature of the site's use has somewhat changed over 20 years. In 1997, it appeared to be a complete 'showpersons site' with some fairground activity on site. However over time, a variety of residents (some of whom were directly connected with fairground activities) in caravans have moved on and off the site, the actual fairground use of the site has ceased altogether, and very large pieces of equipment are no longer stored here. Thus by 2011 and continuing to 2017, officers considered the site to have more of a mixed use comprising both showpeople, other fairworkers and unrelated residents, whereby the latter category was not just a minor ancillary element.

5.44 Nevertheless the site continued to be predominantly a wintering quarters for showpeople and their dependants, including storage for equipment. In particular the landuse surveys have shown that the equipment storage has been evident in a variety of forms throughout the last 10 years or more. Photographic evidence from neighbours, objecting to the 2010 Certificate application, also showed that significant amounts of fairground equipment were stored on the site during this period. The landuse surveys show that the site is not solely in a residential use and that no discrete and physically distinct part of the site is in separate residential use.

5.45 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.

5.46 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 unrelated to the showpeople, this was not the case in 2010 where they were more scattered around the site. In both scenarios, 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.

5.47 It is concluded that the existing usage of most of the site 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.

5.48 The conclusions reached by the Council (discussed in the preceding section on existing use and summarised in para 5.36 above) about the nature of the existing lawful use was reached after careful consideration of the evidence available to officers at that time. The City of London's submitted

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), whereas the Council considers that it is a Sui Generis mixed use comprising a showpersons site and use by other residential caravans . 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.

5.49 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 final 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.

#### *Assessment of proposed use*

5.50 The proposed use as a residential caravan site contrasts with the above-mentioned mixed use. 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. The proposed residential caravans would be static, as described in the Certificate application, which clearly contrasts with the fluctuating and peripatetic nature of the current showpersons site which, by definition, accommodates 'travelling showpeople' (as defined by the 2015 Planning policy guidance for traveller sites).

5.51 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 (in the case of *Forest of Dean DC v Secretary of State for the Environment* [1994] 1 WLUK 43; EG 138 (CS)) 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.

5.52 Although there are currently 9 unrelated residential caravans on site, these are small and mostly appeared to be vacant for some or much of the year; also they only occupy part of a much larger site used for other purposes. It is thus considered that the proposed use for static residential caravans would involve a more consistent, continuous and intensive occupation by permanent residents throughout the day and year compared to the current mixed use.

5.53 The appellant's agent in his correspondence agrees with the Council's conclusion that the site currently has a mixed use (see paras 5.36-37 above). 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 it would result in a materially different landuse here which would require planning permission. Although it is true that loss of these items would not require permission in themselves, the equipment storage is an integral and important part of the showpersons site use and its removal on a permanent basis would result in a change in the overall nature and usage of this site as a true 'showpersons site' with a mix of activities. 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.

5.54 It is thus concluded 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.

*Other considerations*

5.55 Another consideration arising from the change of use is 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 Metropolitan Open Land (MOL) and Private Open Space (POS). The site was also described by officers in 1997 as appearing 'semi-vacant'; 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.

5.56 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 as well as the character of the conservation



area.

5.57 The appellants in their planning statement show examples of a possible layout and designs of residential caravans on the entirety of this site. Their indicative 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.

5.58 Furthermore, if a Certificate of Proposed Use for a residential caravan site was to be granted, there would be no control 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.

#### *Case law*

5.60 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.

5.61 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 or because a sole residential caravan use would be materially different from the unique travelling showperson's site use. The latter involves both residential and business-related elements, including storage and repair/maintenance of equipment, as recognised in the Winchester CC case and the Circulars.

5.62 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.

5.63 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 statement and site plan.

## 6.0 SUMMARY AND CONCLUSIONS

- 6.1 The 2 issues for this appeal are to establish: (i) 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.
- 6.2 The site had an existing lawful use as 'showpersons site' in 1997 and this was accepted by an appeal Inspector in his decision of 1998 who agreed that the lawful use was probably as winter quarters as described in the Circular 22/91 on travelling showpeople, which was a 'Sui Generis' use. Subsequent Council landuse surveys and investigations in 2006, 2010 and 2017 have shown that the site has continued to operate as a 'showpersons site' with wintering quarters for showmen, their dependants and fairground workers, equipment storage and repair, plus fluctuating numbers of some other residents in caravans, some of whom were related to fairground work. Since 2010, Council officers have considered that the unrelated residential caravan occupation was significant enough to be not merely ancillary to the showpersons site but rather an integral element of the overall mixed use of the site. Nevertheless these residential caravans never formed a continuously occupied selfcontained and separate part of the site. It is thus considered that the current lawful use of the site, based on the balance of probability of usage over the last 10 years since 2007, is a mixed use (defined as 'Sui Generis') on a site that is one planning unit and that comprises a 'showpersons site' and other residential caravans .
- 6.3 The proposed use of the site for 7 static residential caravans over the whole site will be for permanent residential occupation by unrelated residents who will have

different jobs and lifestyles, not necessarily showpeople or fairground workers. As indicated on the appellants' submitted illustrative layout, the caravans could be large permanently fixed mobile homes and there would be no space available for extensive equipment storage and repair. The nature and character of this use would resemble that of a residential caravan park. In terms of its physical appearance, intensity and type of occupation and the side effects such as traffic generation, this use would be materially different from the current mixed use involving a predominantly 'travelling showpersons site' which is occupied by fluctuating and mobile numbers and areas of different items throughout the year. The proposed loss of equipment storage, which is an integral and important part of a true 'showpersons site' with a mix of activities, would result in a change in the overall nature and usage of this site. It is considered that the proposed use of the site for permanent residential caravans would be materially different from this Sui Generis use. Furthermore the indicative operational works in creating permanent residential plots would require planning permission.

6.4 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.

## **7.0 APPENDICES**

1. Site plan
2. Council's putative decision letter dated 20.7.18
3. Council officers' delegated report on CLOPUD application ref 2017/4346/P
4. Proof of evidence for public inquiry on application ref PW9702255 17.2.98

5. Appeal decision letter for above dated 7.5.98
  6. Enforcement landuse survey plans and lists of residents 7.10.05
  7. Council officers' delegated report on enforcement case ref EN04/0265
  8. Council officer's letter to Abbotts dated 7.3.06
  9. Landuse survey plans and list of residents July 2010 (revised March 2011)
  10. Council officer notes on CLEUD application 8.12.11
  11. Emails to and from agents for CLEUD application dated 20.1.12 and 22.2.12
  12. Landuse survey plan, notes and list of residents November 2017
  13. Emails from appellant's agent dated 23.1.18 and 29.1.18
  14. Council tax and business rates records, given in emails dated September 2018
  15. London Borough of Camden Local Plan 2017- (para 3.286 of policy H11)
  16. 'Planning policy for traveller sites' (revised August 2015) - extract with Annex 1
  17. Circular 04/2007 on travelling showpeople (extract with Preface and Definition)
  18. Caravan Sites and Control of Development Act 1960 (relevant extracts)
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