

Proof of Evidence of Ben Eiser BSc (Hons) MA PG Dip MRTPI

Land at North Fairground Site Vale of Health London NW3 1AU

*Certificate of Lawfulness Section 192 Proposed use
of land as a site for the stationing of seven static caravans for the purposes of human habitation
Appeal by Knightsbridge Parks LLP*

1. My name is Ben Eiser, I represent the appellants, Knightsbridge Parks (check LLP). The appellants hold an option to purchase the site and do not own the site.
2. This case concerns a certificate of lawfulness for a proposed use described in the application as *Proposed use of land as a site for the stationing of seven static caravans for the purposes of human habitation*.
3. The main, indeed sole issue is whether the use as proposed would represent a material change of use which would represent development and therefore require planning permission. The appellant's case is that having regard to the planning history the proposed use does would not represent a material change of use.
4. In order to consider whether the proposed use would be lawful it is necessary to consider the history of the site and what is currently lawful, what is proposed and whether that represents a material change of use.
5. In considering a certificate of lawfulness the planning merits of the case are not relevant. However, I note that part of the statement of case presented refers to planning merits and for completeness these points are also considered.

Planning History

6. There has never been a planning permission granted at this site. It is understood that since the 1900's the land has been in the ownership of members of the Abbott family and has been passed down the generations through time. The Abbott family have a long established family background in the running and operation of travelling shows and fairs.
7. An application for a certificate of lawfulness was made in 2010 but was withdrawn.
8. The Local Planning Authority have never served an enforcement notice in respect of the use of the site.
9. As a result of the planning history there are no planning conditions or limitations on the grant of permission to consider in this case.
10. There are a number of aerial photographs available and these are appended to this statement as exhibit A.

11. As well as the certificate of lawfulness application made in 2010 there was an application for residential redevelopment in the form of a block of flats made in 1997 and the subject of a dismissed appeal. The 2010 certificate and the 1997 application provide some insight into how the site was used and described at those times.
12. The application submitted in 1997 was an application for planning permission for the erection of a block of flats. The main issue in the case was not the lawful status of the site and as an application for planning permission there was no obligation upon the LPA or the Inspector to consider the lawfulness of the use. There is a description of the site provided by the LPA and an observation by the Inspector in respect of the use of the site. The descriptions provided by the LPA and the Inspector in respect of the site's appearance and the physical features of the site appear to be consistent with the aerial photograph available from 1999.
13. The appeal Inspector observed in the decision that the site was 'probably' winter showperson's quarters. It is of note that the description was an observation and there is no information as to how much evidence the Inspector would have had, or which would have been relevant for the Inspector to consider in making this passing observation.
14. I understand that in 2003 a prospective purchaser explored possible redevelopment options in discussion with the local community and presumably the Local Planning Authority. However, these informal discussions did not result in any formal submissions.
15. The application for a certificate of lawfulness submitted in 2010 was for an existing use described as a 'residential caravan site.' This application was withdrawn in 2011 following the LPA's advice that the site constituted a mixed use. The available evidence from this application does suggest that for at least ten years prior there were residents living in caravans with little or no connection to travelling fairs and members of the Abbott family living in caravans as well as the storage of fairground equipment.
16. We do have available a survey undertaken by the planning officer of the different uses on the site and the relationship of the occupants, if any, to travelling showperson's activities. We also have the email sent by the planning officer which appears to prompt the withdrawal of the application. This correspondence is appended as exhibit B.
17. The LPA's position that in 2010 the site was a mixed use is consistent with the available aerial photographs and it is of note that the LPA were not suggesting that there had not been any residential use of caravans on the site but that the description of a 'residential caravan site' was not accurate.
18. In 2010 the LPA concluded that the site had a mixed use consisting of caravans occupied for residential purposes by both persons connected and unconnected with travelling shows, the storage of travelling show equipment and caravans. It is likely

that maintenance and repair of the equipment also took place on the site although I would suggest that this was ancillary to the storage of the equipment as there is no evidence of any special maintenance equipment, inspection or work ramps or other features for significant work to be undertaken on the equipment.

19. This description of the site appears consistent through the aerial photographs and remains true of the current use of the site. From all the representations made in this application, whilst the numbers of caravans occupied by persons unconnected with travelling shows and what represents a connection with the shows is disputed there does not appear to be any dispute that caravans are on site occupied for residential purposes. Whilst the number of caravans on the site may have fluctuated (although from the aerial photograph this does not appear to have been significant) and the number of caravans connected or unconnected with travelling shows is not agreed, caravans I note that a figure of 3-4 caravans occupied without connection to the fair was provided by the VAHS in their representations to the Local Planning Authority during a previous application in 2010.
20. As part of this application a site visit was held with the planning officer and an updated survey was undertaken, this survey produced by the LPA is attached as exhibit C.

The identity or profession of the occupants of the caravans

21. The site having previously been described as a showmen's site or a showmen's winter quarters has been the subject of previous considerations by the Local Planning Authority and in 1998 the Planning Inspectorate. Assessments of the occupation of the caravans have often distinguished between members of the Showmen's families and those who assisted in the fairs and those who are unrelated to the fairs.
22. A showman or travelling showman is a profession, it is not a race or ethnic group. It is quite possible and indeed typical that showmen will supplement their income from other sources as well as attending and running fairgrounds.
23. As previously discussed the site was not granted planning permission as a 'travelling showperson's site' there is no functional limitation upon the grant of planning permission. The Government's description of a travelling showperson's site is *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.*
24. The advice refers to travelling showperson's sites 'which may/will need to incorporate space...'. There is no reference that it is essential that there is a storage area or that the storage area is necessarily a significant proportion of the residential element.

25. The mix of uses or activities on the site in this case is the same whether or not a reference to travelling showperson's is inserted in respect to the occupation of some of the caravans.
26. It is not unlikely that a travelling showperson will have a secondary profession or indeed that being a showperson is their secondary profession.
27. *Planning Policy Guidance for Traveller Sites* published in August 2015 provides the following definition;

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.

28. It follows that it is entirely possible that a showman's plot on which a family reside could include a caravan which is resided in year round by one parent and their school age children. Another parent might be a travelling showperson who leaves the site to travel to fairs around the country and might return for short periods during the summer and for longer periods during the winter. Such a use, whatever the interpretation of the site history would appear to be accepted by all parties as being lawful on the appeal site. Such a use would not necessarily entail the storage or keeping of fairground equipment, large or small, on the site.
29. The PPG identifies that 'older family members may stay on site for most of the year' it is evident that the PPG was not seeking to suggest a travelling showperson who retired and rarely undertook any work would not be expected to remain on the site.
30. The PPG clearly envisages that the nature of occupation of a travelling showperson's site would have a significant degree of permanence and indeed for at least some members of the family would be their main place of residence throughout the year.
31. The aerial photographs which are available are images of the site in the summer months. The photographs are consistent in showing a site in active use in the summer months and there appears to be little vacant space at the time when a site described as 'winter quarters' would be expected to be quiet if not vacant.
32. This is not a site which appears to have been heavily used in the winter and then left vacant and underutilised in the summer months. The site appears to have been used consistently throughout the year for the period available in the available photographs and for at least ten years proceeding this application.
33. In the example of a family plot I described in paragraph 12, it is quite possible that one of the economically active members of the family would have a more settled or in geographical terms 'permanent' employment. There is nothing in any definition which

would exclude alternative professions being undertaken. The list of possible employments which a member of a family might undertake is almost endless.

34. Against this threshold of what as a minimum would be lawful on the site, if the member of the family who was engaged as a travelling showperson decided to embark on a different profession it is difficult to foresee how there could be any material change of use as a consequence of such change. The nature of the occupation of the caravan would be no different if the profession of the showman were to change to a contractor who travelled for work or an HGV driver who regularly stayed away from work. Indeed in those examples it is difficult to foresee how the profession of the occupant would even be identifiable let alone have a material impact on the land use of the site.
35. It follows that the occupation, cultural or professional identity of a person occupying a caravan on a site cannot be material whether that is from a baseline of caravans occupied by economically active travelling showperson's or as in this case a mixture of those with an association with travelling showperson's and those without. For this reason whether or not the site is described as a *mixed use of residential caravans, storage and maintenance of fairground equipment and storage of caravans* or a *mixed use of residential caravans occupied by travelling showpersons, storage and maintenance of fairground equipment and storage of caravans* does not have a material impact on whether the use proposed in this application is lawful.
36. The planning history and the aerial photographs all show in excess of seven caravans in occupation regardless of the identity of occupants. The proposal to continue this element of the established uses cannot be unlawful.

The continuation of uses other than the residential caravans

37. The application seeks a determination of as to whether *Proposed use of land as a site for the stationing of seven static caravans for the purposes of human habitation* is lawful. The application if granted would not require the removal of all of the stored equipment on the site. However, it is the appellant's intention that if granted the storage uses would cease and this is how the application has been considered.
38. Following pre-application discussions with the Local Planning Authority an indicative layout was included within the supporting statement which accompanied the application. This indicative layout showed seven caravans on the site with no other uses. The intention of the appellant is not to operate the commercial storage and storage of fairground equipment on the site and there has been no attempt to disguise this long term intention.
39. The occupation of seven caravans must, having regard to the lawful use of the site be lawful. The only question which would remain would be whether the other uses also needed to continue. This case therefore centres as much on what isn't undertaken as what is undertaken on the site.

40. A travelling showperson's business, like many businesses will adapt to changes in circumstances and the range of commercial activities in any business will alter depending on economic considerations and the needs of the business operator. In the case of the North Fairground site it would be entirely possible that for example one of the elements of the commercial activities undertaken at the site, the storage of caravans, was not considered to be commercially desirable and therefore the site owner may elect not to offer the storage uses any longer. If a site owner elects not to continue with one element of their business a Local Planning Authority cannot positively require someone to undertake an activity. Planning enforcement may require a use to cease but it would not require a use to be undertaken.
41. In the same manner as discussed above in respect of caravan storage, the owners of a site in central London with a local road network unsuited to moving large commercial vehicles may (and indeed already have) decide that it is preferable that large items of fair equipment are generally stored outside the city on storage and other sites rather than be driven into the City. This is purely a practical decision which unrelated to land use planning simply reflects the commercial choices of the site operator. It is a comparable choice to many business which may decide to have regional operations centres rather than all of their activities being located in one place.
42. The operation of the Fairground Site which is the subject of this appeal could, without any planning permission being necessary decide that any large or all fairground equipment be stored outside the City itself, any associated maintenance and repair of the equipment would also cease. The operators could also conclude that the storage of caravans was not commercially desirable. These would be commercial decisions which could easily be reached by the site operators and if this were done what would be left on the site would only be the caravans occupied as the residential accommodation.
43. There would be no change of use of the land in the scenario identified above, simply the adaptation of the business to the changing demands of the site. Whether these changes took place over time on an incremental basis or as an immediate action there would not be a change of use against which planning enforcement could be undertaken.
44. In cases where there is a mixed use of the land and the proportions of those uses change to an extent that it is no longer possible to describe the site as a mixed use in some circumstances there may be a material change of use. In many cases as one element of the mixed use is reduced or removed one of the other activities would increase. This is not the case in this proposal as the number of caravans is not increasing, the number of caravans is remaining consistent or reducing and the overall level of activity is reducing.

Intensification

45. A material change of use can occur through intensification. This is not disputed. What is proposed in this case cannot be a material change of use through intensification as the use as described represents a reduction in the previously established uses.
46. I have already discussed why the actual identity or profession of the occupant is not material to the use of the caravans for residential purposes. Whether or not the application had been described as *Proposed use of land as a site for the stationing of seven static caravans for the purposes of human habitation for occupation by the Abbot Family/ or for occupation by travelling showpersons/ or for occupation by any persons* the conclusion that this was lawful would be consistent.
47. A reduction or even a cessation of a use cannot in itself make a use more intense. It can only make the overall activities less intense.
48. If one considers the off-site and on-site effects which can be considered in informing a material change of use an exercise often undertaken when considering whether caravan parks occupied for holiday purposes would, if used as a person's sole or main place of residence represent a material change of use the conclusions would be that there is not a material change of use in this case. The character of the site would not change. What is proposed is the residential use of seven caravans on the site, a use accepted to be lawful, indeed the overall accepted lawful use of the site being for considerably more residential caravans, together with other associated activities. The proposed use would not and could not result in any material change in character.
49. The visual appearance of the site would not be materially different. It might in some perspectives be an improvement or a tidier appearance not to have the stored equipment and caravans but it would not be more intense. I note that there are a number of representations in relation to the impact on the openness of the site and the adjacent Heath together with reference to the 1998 Inspector's views on the impact of that proposal on the Heath and the status as MOL.
50. The planning merits of the proposal are not relevant but in any event the fact that an Inspector concluded in 1998 that a block of flats would be harmful to both the appearance of the area and the openness of the MOL is of no indication that this proposal would have any adverse impact on the site or the area's appearance or the openness of the MOL. Caravans come in a broad variety of sizes and shapes, whilst some caravans can be two storey in height a static caravan by definition is limited to an internal ceiling height of no more than 3 metres. Compared to the size of vehicles and equipment on the site this would be no greater or a reduction in the overall height of structures on the site.
51. The City of London's statement of case suggests an increase in traffic to the site. This is not supported by the site history which consistently shows in excess of seven caravans being occupied. Ceasing to use the site for commercial vehicles and reducing the number of caravans could only result in a reduction in the lawful traffic use of the site.

52. The City of London's statement of case also refers to increased light pollution from the site. For the reasons previously discussed at least seven caravans are occupied on the site for residential purposes. I can think of no evidence to suggest that the identity of the occupant would have any bearing on how often their lights were on at the site. Notwithstanding this, if the use were considered as winter quarters when evenings were longer the use of artificial light would be much more of a feature than in the summer months when through normal use lights are used for a shorter period of the evening. I do not see that this suggestion can be a credible indicator of a material change of use.
53. The use as described cannot be a material change of use by reason of intensification. Even the most cautious description of the site history acknowledges that caravans on this site for the purposes of human habitation is lawful and established and the proposed use will continue that established use through at a lower intensity.

Operational Development

54. This application is for a proposed use of land. No operational development is to be considered in this application, however as it is a matter raised in representation it can be addressed without prejudice to its relevance.
55. The siting of a caravan on the site would not require operational development, this is not a case of a steeply sloping site where engineering works are required in order to hold the caravans within the ground. In the same manner as caravans currently exist on the site, caravans can be sited without any operational development. The appellant would wish in the long term to break up some of the hardstanding to provide garden areas around the caravans, this aspiration and its merits are not part of the proposal.
56. For completeness the site would be entitled to a caravan site license issued under the Caravan Sites and Control of Development Act 1960. A site license confers a permitted development right to undertake works required by the site license, even if any improvements to the drains and services or the road surfaces or the bases for the caravans was necessary or desired it would be permitted development if a site license is issued.

The relevance of planning policy

57. Planning Policy is not relevant to a Certificate of Lawfulness application. The City of London have drawn attention to the Richmond and Chelsea judgements as the relationship to a 'planning purpose' in considering lawfulness. These comments appear to be more in the context of the impact on the MOL which would be extending the Richmond principle into effectively considering a planning application as part of a certificate of lawfulness.

58. The situation considered in the Richmond and Chelsea cases is distinguishable from this site. There is no policy suggestion that the retention of the site as a travelling showperson's site is necessary or that it would have some external impacts. Furthermore there is no definable baseline of the impact as the certificate would not prevent the site being occupied by travelling showperson's unlike the Richmond situation where the physical works would have altered the number and size of flats in that case.

Conclusions

59. For the reasons discussed in this proof there would not be a material change of use if the use as proposed were to take place. There would be no mechanism under which the Local Planning Authority could take planning enforcement action against the use and accordingly the use as described should be considered to be lawful and a certificate issued accordingly.

Appendices

- 1 – Aerial Photographs
- 2 – 2010 file extracts
- 3 – 2017 site survey