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

PUBLIC INQUIRY

**SUMMARY
PROOF OF EVIDENCE**

**PAUL O'NEILL
MA (Hons) MRTPI**

METROPOLIS PLANNING & DESIGN

ON BEHALF OF THE CITY OF LONDON CORPORATION

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

JANUARY 2019

1. The City is obliged under various statutory provisions, 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.
2. The Vale of Health settlement, and Conservation Area, sits within the boundary of the Heath and the City therefore takes an active interest in proposals and gives full consideration to those that will have a material impact on the Heath.
3. This Appeal is against non-determination of a Certificate of Lawfulness of Proposed Use, and, also, in this instance for Proposed Operational Development.
4. The Appeal site is designated as Metropolitan Open Land (MOL) and Private Open Space (POS) respectively and lies within the Hampstead Conservation Area.
5. I am of the view that the site is in sole use as a showpersons site (which is defined in planning guidance and case law to include a varied mix of uses associated with showpersons activities).
6. The Appellant and the Council 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.
7. 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 "unrelated" (i.e. to showpersons) residential use.
8. The Appeal seeks 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, two steps are necessary:
 - i) Establishing the *lawful existing use* of the planning unit;

- ii) 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
9. As a baseline, 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.
10. 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 an enforcement investigation concluded in 2006 this remained the case; in 2010 there was insufficient evidence to support the grant of a Certificate of Lawfulness of existing use for the use now proposed.
11. Therefore, in order to confirm that the proposed use would be lawful, the burden of proof rests with the Appellant to establish the presence of unrelated residential caravans on site. This test is no less relevant for a Certificate of Lawfulness for a proposed use than it is for an existing use. 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 prior to the date of the Application
12. 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 showpersons use of the site, and indeed, the limited available evidence would seem to point towards the contrary.
13. 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.

14. On a review of the available evidence, my view is that the lawful existing use of the site is wholly as a showpersons site and the Appeal proposal would constitute a material change of use.
15. The Appellant and the Council (subject to the reservation specified above) consider the site to be in mixed-use, incorporating a showpersons site and an unrelated residential caravan site. In my view, on the Appellant's case, the subsuming of the showpersons use on the site, in favour of the whole use of the site for 'unrelated' residential caravans, would also result in a material change of use when compared to what may currently be a relatively minor and disparate activity on the site.
16. The proposal would materially change the nature, character and activity of the site. The formalising of the site layout for residential purposes, would have on and off-site impacts that should be considered material.
17. 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 the Council's Statement of Case) the change proposed, from showpersons use on the site to an unrelated residential caravan use across the whole site, would in my view, represent a material change of use and should be properly assessed through the normal procedures and policy tests associated with an application for full planning permission.
18. 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 – that would also require planning permission.
19. For all of the above reasons we request that Appeal is dismissed