**APP/X5210/X/18/3198526**

**NORTH FAIRGROUND SITE, VALE OF HEALTH,**

**LONDON NW3 1AU**

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**OPENING STATEMENT**

**On behalf of the**

**LOCAL PLANNING AUTHORITY**

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1. INTRODUCTION – PRINCIPLES GOVERNING THE INQUIRY
	1. This is an appeal under s. 195 Town and Country Planning Act 1990 (“TCPA 1990”) against the non-determination by the London Borough of Camden as Local Planning Authority (“LPA”) of the Appellant’s application for a Certificate of Lawfulness of Proposed Use or Development (“CLOPUD”) under s. 192 TCPA 1990.
	2. The Application sought the Certificate for:

*"use as a site for seven static caravans for residential occupation.”*

* 1. The outcome of the appeal will be determined purely on the basis of the application of the law to the facts. The desirability or otherwise of the proposal, e.g. from the viewpoint of planning policy or degree of environmental impacts, is irrelevant.
	2. The burden of proving that a Certificate is justified falls upon the Appellant, on the balance of probabilities.
	3. The whole question for determination can be encapsulated as follows:

*"whether, looking at the current lawful use of the land and comparing it with the proposed use of the land, the Appellant has demonstrated that there would be a material change of use for the purposes of the planning legislation.”[[1]](#footnote-1)*

If there would, then the Appellant is not entitled to a Certificate. If there would not, then the Appellant is so entitled.

1. OUTLINE OF THE LPA’s CASE
	1. Lawful Use
		1. The starting point is the agreed position that the entire Appeal Site is in the ownership of the Abbott family. The family are ‘showpeople’ and they use the land to live in caravans and for other business purposes in connection with travelling fairs.
		2. The Site has, for many years, and certainly the last 10 years, housed a fluctuating number of different caravans, car and lorry parking, trailer and equipment storage, together with toilet and storage sheds. Occupation by people varies through the year. These matters are also agreed.[[2]](#footnote-2)
		3. There is no planning permission or Certificate of Lawfulness, so ascertaining the current lawful use must be done on the basis of evidence of use.
		4. The distinct and particular nature of Travelling Showpersons’ Sites (“TSS”) is recognised in law and Central Government policy.
		5. In Winchester CC v SoSCLG and Others [2013] EWHC 101 (Admin)[[3]](#footnote-3) Philip Mott QC, sitting as a Deputy Judge of the High Court, recognised that Central Government Circulars pointed to the conclusion (amongst others) that *“there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site”*, and that *“a travelling showpeople’s site may be a significant and separate landuse in planning terms”*. He went on to hold that the express planning permission at issue in that case *“was not the grant of permission to use the land as a residential caravan site ... It was the grant of permission to use the land as a travelling showpeople’s site which is a distinct and narrower use ...”* (emphasis added). [[4]](#footnote-4)
		6. There is one planning unit, which comprises the Appeal Site.
		7. Within that Site, the record of events set out in Thuaire’s proof, his appended contemporaneous site notes and sketch plans and correspondence, corroborated by the photographs before the Inquiry, demonstrate a fluctuating pattern of use, with the majority of occupation and activity fitting within the recognised category of TSS use and a minority of occupation by others, unconnected with shows/fairs and/or an element of vacancy. The minority element was more than de minimis and so the conclusion was reached, in 2011, that, on the balance:

*"it is most probably a mixed use of*

1. *showpersons’ site with numerous dependents and some fair workers (total 12) and*
2. *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.”[[5]](#footnote-5)*

* + 1. This was a conclusion of some formality, since application had been made for a Certificate of Lawful Use or Existing Development (“CLEUD”) for a residential caravan site. At that point, the Abbott family were being assisted or represented by an experienced planning specialist who worked for a leading London firm of specialist solicitors. In response to Mr Thuaire’s email, and on professional advice, the CLEUD application was withdrawn.[[6]](#footnote-6)
	1. Material Change of Use?
		1. This is an appeal for a CLOPUD, rather than a CLEUD. As set out above, the earlier CLEUD application was withdrawn, on professional advice. Therefore the question is not whether the existing use is that of a residential caravan site, rather, whether the change to residential caravan site would be material.
		2. The LPA submits that such a change would be material.
		3. Firstly, caselaw[[7]](#footnote-7) has established that a residential caravan site is significantly distinct in planning terms from use as a TSS’s Site. This decision draws on and reflects the guidance of the Secretary of State.
		4. Therefore the only remaining question is whether the change to 7 static caravans/mobile homes, as proposed in this particular case, would be materially different from the current mixed use.
		5. Use as a TSS’s Site is, as the Government Circular recognises, one which comprises elements of residential, storage and maintenance/repair/testing activities. It is therefore, in itself, a composite TSS, fluctuating and, to some extent, seasonal use. To that extent, it is different in character from a use which is residential alone. In this case, the current use comprises a majority of the composite use and a minority of solely residential use. The resultant mix is, in itself, sui generis, and retains a strong element of the TSS composite, fluctuation and seasonal character.
		6. Caselaw has clearly established the correct approach to material change of use when the base use is dual or mixed use (though none deals with the specific instance here of a dual TSS/residential caravan use). In the leading case of Wipperman v Barking LBC (1966) 17 P&CR 225, the Divisional Court held that where there was a composite use of land for more than one component activity, the cessation of one of the component activities would not by itself amount to a material change of use, but there could be a material change of use if one component use had absorbed the entire site to the exclusion of the other. It must be noted that this was a case where the two ‘base’ uses were storage of building/fencing materials and car breaking and the car breaking had ceased. On the facts as found by the Minister, however, not merely had car breaking ceased, but storage had spread over the whole site. Lord Widgery’s statement about the cessation of one element of a composite use ceasing, however, must be read in context. In the case of the very particular, recognised use of a TSS Site, the loss of its distinctive characteristics – storage, repair/maintenance/testing of kit and its fluctuating and seasonal nature – to be replaced solely by residential use would fall into the Judge’s concept of ‘absorption’.
		7. The Planning Statement in support of the application raised the question of what the legal position would be if the storage and equipment repair/testing were to cease, leaving the residential occupation of caravans only on site. This question is hypothetical. It is not what has happened, nor is it what is proposed. The application seeks a Certificate in respect of 7 mobile homes which would occupy the entire site. The illustrative layout indicates what is currently proposed and would, if the CLOPUD were granted, be stationed on the land, subject to any necessary operational permission. The Council’s submission is that a sole or total residential use would have characteristics and incidents materially different from the current composite use which it would have supplanted. Therefore such a change would involve a material change of use for the purposes of the Act and the Appeal should be dismissed.

MORAG ELLIS QC

1. Cf. Wipperman v Barking LBC (1966) 17 P&CR 225 at 229 [↑](#footnote-ref-1)
2. Socg p.3 para 1.2 [↑](#footnote-ref-2)
3. City of London Statement of Case, Apx 4 [↑](#footnote-ref-3)
4. Op. cit. paras 40-41 [↑](#footnote-ref-4)
5. Thuaire Proof Appx 11 [↑](#footnote-ref-5)
6. Thuaire proof p.16, para 5.19 and letter from Berwin Leighton Paisner, Thuaire Appx 11. [↑](#footnote-ref-6)
7. Winchester above [↑](#footnote-ref-7)