**APPEAL BY KNIGHTSBRIDGE PARKS LLP**

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

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

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**OPENING SUBMISSIONS**

**ON BEHALF OF**

 **THE CITY OF LONDON (RULE 6 PARTY)**

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**Introduction**

1. This is an appeal under s. 195(2) of the Town and Country Planning Act 1990 (as amended) (“TCPA 1990”) in respect of the non-determination by the London Borough of Camden (“the Council”) of the application by the Appellant for a Certificate of Lawfulness of Proposed Use or Development (“CLOPUD”) under s. 192 TCPA 1990. The application, made on 31 July 2017, sought a certificate for *“use as a site for seven static caravans for residential occupation”.*
2. The City of London (“the City”) has sought Rule 6 status in this appeal on the basis of its responsibility for the management of Hampstead Heath and the active role that it takes in making representations in respect of proposals concerning development on the Heath and, as in this case, on its boundary, with the aim of protecting the open, natural character of the Heath.
3. As is the position with all CLOPUD cases, the burden of proof falls on the Appellant, with the standard of proof being the balance of probabilities. Again, as with all CLOPUD cases, the substantive merits of the proposal, in planning policy terms, are irrelevant to the determination of the appeal.
4. The City agrees with the Inspector’s characterisation of the main issue in this appeal as:

*“Whether refusal of the LDC application would have been well-founded. To succeed, the appellant will need to prove on the balance of probability that use of land as a site for the stationing of seven static caravans for the purposes of human habitation would not have involved a material change of use, if begun on 31 July 2017 (the date of the application). This necessitates consideration of the existing lawful use at that date.”*

**The City’s Case**

 Existing Lawful Use

1. The City’s case differs from that of the Council and the Appellant as to the existing lawful use, albeit there is some common ground between the parties.
2. The starting point is that in default of a planning permission or LDC, the determination of the existing lawful use must be undertaken by relying on the evidence.
3. It is agreed that the planning unit corresponds with the entirety of the site.
4. Both the Council and the City share the view that the site is in lawful use as a travelling showpersons’ (“TS”) site. Whereas the Council’s position is that the existing lawful use comprises a mixed use of majority TS use and a minor element of unrelated residential use, the City submits that the site’s established lawful use is solely that of a TS site. In this regard, the City relies upon Mr O’Neill’s proof with its appended photographs, review of the Appellant’s evidence, review of the planning history of the site, consideration of the Council’s site surveys, notes, annotated plans, council tax and business rates records.
5. The sui generis TS site use is particular and unusual, in land use planning terms. Such sites are mixed in use by their very definition and combine accommodation and business uses on the one site, typically comprising residential, fairground storage and maintenance uses with some degree of peripatetic and seasonal occupation by those travelling to fairs. This specific and unusual nature of the use has been long recognised through successive government guidance documents.[[1]](#footnote-1) It has also been recognised in case law, specifically *Winchester City Council v SSCLG* [2013] EWHC 101 (Admin) in which Mr Mott QC, sitting as a deputy High Court judge, concluded that there was 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 TS site “*may”* be a *“significant and separate land use in planning terms”* (see paragraphs 40-41 of the judgment).
6. With regard to the existing lawful use, as at 31 July 2017, the main point of distinction between the parties relates to the extent to which caravans on the site have been occupied, for how long and by whom[[2]](#footnote-2). The Appellant seeks to claim an established lawful residential use of the site that is entirely unrelated to the TS site use. The City submits that the Appellant’s evidence is extremely limited and is unclear and ambiguous as to this purported use and further that there is evidence presented in this appeal that contradicts the Appellant’s position both in relation to the ‘unrelated’ nature of occupants and the continuity of use.

Material Change of Use

1. A residential caravan site is *“significantly distinct”* in planning terms from a TS site, as established by the High Court in *Winchester City Council*. Consequently, the City submits that proposed change of use would, of its nature, result in a material change of use. The appeal should be dismissed on that basis.

Material Change of Use – Position in the Alternative

1. If it is found (contrary to the City’s position) that the site’s existing lawful use is that of a composite mixed use site comprising TS use and minor unrelated residential use, the City submits that the proposed change to a permanent residential caravan use across the entirety of the site would, consistent with the Council’s position, be material.
2. The Appellant’s case, at heart, is that it could, lawfully and without planning permission, strip out all elements of the TS use (the peripatetic and seasonal occupation by those travelling to fairs, the equipment storage activities, the maintenance activities) and in its place put the site into sole residential use.
3. In circumstances in which a site is in composite mixed use, the proper approach, established through case law[[3]](#footnote-3), is that the mere cessation of one of the activities on a site does not, in and of itself, give rise to a material change of use. The case law has established that in such circumstances, one must look to the character of the use of the site before and after the cessation and whether the remaining use has intensified and/or absorbed the site. Applying the case law to what is proposed by the Appellant through its illustrative layout, the City submits that the site in sole permanent residential use as a caravan site as would absorb the site and be of a wholly different character to the composite use. On this basis, the proposed change, would be material and would require planning permission. Therefore, on the basis of either the City’s case or the alternative position of the Council, the appeal should be dismissed.

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**12 February 2019**

1. See Planning Policy for Traveller Sites 2015 and Circular 04/2007, described at pp. 12-15, Proof of Evidence of Paul O’Neill. [↑](#footnote-ref-1)
2. See Statement of Common Ground para 1.2. [↑](#footnote-ref-2)
3. *Wipperman v Barking LBC* (1966) 17 P & CR 225. [↑](#footnote-ref-3)