

Site Address: 147 Havant Road, Hayling Island, PO11 0LF

Proposal: Application for Certificate of Lawfulness relating to 2No mobile homes referred to as Caravan A (sited to the eastern boundary of the land holding) and Caravan B (sited to the southern boundary of the land holding) to continue to be sited at Westcroft Stables and used for purposes ancillary to the existing commercial equestrian use.

Application No:	APP/20/00154	Expiry Date:	22/04/2020
Applicant:	Ms Schaefer		
Agent:	Mrs Scrivener	Case Officer:	Lewis Oliver
	Bourne Rural Planning Consultancy Limited		
Ward:	Hayling West		

1 Site Description

One caravan (referred to as **caravan A** throughout the report) is located adjacent to the eastern boundary of the site at the top of the entrance drive leading from Havant Road and west of a residential property known as 145 Havant Road. The other caravan (referred to as **caravan B** throughout the report) is located adjacent to the southern boundary of the site and is currently vacated.

07/53394/008 - Retention of stable block to south-west of riding school. , Permission
06/11/2007

An Enforcement notice was subsequently served (LPA reference 04/0006/ENF) which required the caravan to be removed permanently from the land. The notice was quashed at appeal (APP/X1735/C/04/1160307) on 30th June 2005 and temporary permission was granted for a 3 year period expiring on 30th June 2008, with a condition attached to require the removal of the structure on or before the expiry of the consent.

97/53394/005 - Retention of (1) caravan (**caravan A**) and lean-to on eastern boundary of site used as office/ restroom, and (2) residential caravan (**caravan B**) on southern boundary of site, Temporary permission granted on ,11th September 1991, expiring 30th September 1996.

91/53394/004 - Renewal of temporary planning permission ref: 89/53394 and 90/53394/2 for retention of caravan used as office/ restroom and retention of entrance (**caravan A**), Temporary permission was granted 10th February 2003, expiring 31st January 2004.
91/53394/003 - Renewal of temporary permission ref: 89/53394 for retention of residential caravan (**caravan B**), PERM,
90/53394/002 - Retention of entrance to office/reception centre caravan (**Caravan A**) - Permission 7th January 1991
89/53394 - Caravan to be used as an office/restroom (**caravan A**) and re-siting of residential (**caravan B**) in the position approved under application 21706/14 - Permission 29th June 1989.
21706/14 - Renewal of permission for person to live in existing caravan for the safety and well being of horses - Permission 30th October 1986

3 Proposal

Application for Certificate of Lawfulness relating to 2 No mobile homes referred to as Caravan A (sited to the eastern boundary of the land holding) and Caravan B (sited to the southern boundary of the land holding) to continue to be sited at Westcroft Stables and used for purposes ancillary to the existing commercial equestrian use.

4 Policy Considerations

N/A

5 Statutory and Non Statutory Consultations

Councillor Clare Satchwell - Hayling East

No response

Councillor I Scott Hayling West

No response

Councillor Joanne Thomas

No response

Legal

I can confirm I have reviewed the evidence and considered your report and I am satisfied the certificate can be issued.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 1

Comment	Officer Comment
Object to static caravans on the site, which has an adverse impact on the amenities of neighbouring properties	See below

Comment: Regard cannot be given to any objections to this application made on planning grounds. The determination of this application turns on the facts of the case and their interpretation in the light of relevant planning law and judicial authority.

7 **Legal Considerations**

- 7.1 The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of an existing development. The relevant legal test is "balance of probabilities". Regard cannot be given to any objections to this application on planning grounds.

If the application is granted, planning conditions cannot be imposed. However, in accordance with the advice in the Government's Planning Practice Guidance (PPG), the certificate should state the precise details of the use and any limitation on that use.

The PPG advises that the applicant is responsible for providing sufficient information to support an application and the relevant test for determining applications is on the balance

of probability. The PPG states:

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

- 7.2 In order to claim immunity from enforcement action by virtue of Section 171 B of the Town and Country Planning Act 1990, the applicants must satisfy the relevant time limits. In this case s171B (3) is relevant, which states that "*In the case of any other breach of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach*". The evidence submitted in support of the Certificate is as follows:

Evidence submitted

Google earth aerial shots from 2015, 2007 and 2005

Appendix 1 - Appeal decision - APP/X1735/C/04/1160307 in relation to Enforcement Notice 53394/ENF

Appendix 2 - Application 02/53394/006 Decision notice

Appendix 3 - Application 03/53394/007 Committee report

Appendix 4 - Application 03/53394/007 Decision notice

Appendix 5 - Letter from Mr P Dent - outlining monthly rent charges for stables and caravans on the site, including a site plan

Appendix 6 - Statutory declaration of Ms Ann Rogers, which includes copies of sales invoices for rent payment of stables

Appendix 7 - Statutory declaration of Dr Charlotte Day

Evidence on Council's file.

The evidence as outlined in the planning history section.

Assessment of evidence

- 7.3 The LPA must still make a determination of the application as submitted and this must be based on the evidence provided and on the balance of probability. The evidence provided by the applicant is the form of statutory declarations, proof of bills, the extensive planning history to the site and aerial photography as outlined above.
- 7.4 As background it is considered appropriate to consider the authorised use of the land at Westcroft Stables. From the planning history there is no explicit permission in relation to the commercial use of the site, nor for the associated paraphernalia, including stores, stables or menage. However from the extensive planning history to the site, it is evident that there has been a commercial equestrian use riding school operation on the land from the 1970's, which has been referred to in the previous Officer Committee reports. In addition this is also outlined by the Inspector in the appeal APP/X1735/C/04/1160307, located in appendix 1 of the submitted evidence, in relation to the appeal for **caravan B**. The Inspector outlined that *"An equine use has apparently been established at the site for many years and the mobile home the subject of the notice has received a number of temporary permissions"*
- 7.5 The last planning permissions in place for the caravans/mobile homes expired on: **Caravan A** (under application 03/53394/007) on 28th February 2007; and **Caravan B** (permitted at appeal APP/X1735/C/04/1160307) on 22nd May 2008
- 7.6 The agent has provided evidence that, since the planning permissions have expired, the mobile homes have remained on site without the benefit of any formal planning permission. The agent has outlined that **Caravan A** has continued to be used to provide restroom and office facilities to support the ongoing equestrian enterprise.
- 7.7 In terms of **caravan B**, the agent has outlined that this was permitted, albeit on a temporary basis, to provide residential accommodation for a worker, however the residential use ceased many years ago. The evidence submitted outlines that **Caravan B** has remained on the site and continues to be used for purposes ancillary to the ongoing equestrian use as a restroom and occasional (emergency) overnight accommodation.
- 7.8 The submitted statutory declaration by Ms Ann Rogers (appendix 6), who worked for St Hermans Estate since 1993, indicates that the mobile homes have been on the site and in situ for at least ten years. This evidence is supported further by the statutory declaration of Dr Charlotte Day (appendix 7), who was another livery client at Westcroft Stables around 2006. This declaration confirms that the two mobile homes have been in situ in the exact same locations on the site. The evidence in these statutory declarations is consistent with Google Earth images submitted, which are for the years 2005, 2007 and 2015.
- 7.9 The Local Planning Authority has no contrary evidence of its own. No third party comments have been received either supporting or denying the use. Overall and having considered all matters raised, it is considered that as a matter of fact and degree the evidence weighs in favour of the applicant that the two mobile homes (**Caravan A and Caravan B**) have been in situ at Westcroft Stables and have been used for purposes ancillary to the existing commercial equestrian use for in excess of ten years. As such the applicant's evidence is sufficiently precise and unambiguous to

find, on the balance of probability, that the use has subsisted for the requisite ten year period and is thus immune from enforcement action.

8 Conclusion

- 8.1 The applicant has provided continuous evidence that the use has subsisted for the requisite ten year period, and for a longer period given the extensive planning history to the site. This application has been publicised in accordance with adopted procedures and no evidence to the contrary has been raised.
- 8.2 In conclusion, having reviewed all the information submitted with the application, and on the balance of probability, it is considered that it has been satisfactorily demonstrated that the use of the mobile homes has been in continuous use, for a period of over ten years, for purposes ancillary to the existing commercial equestrian use. Furthermore the legal department have considered this application and having reviewed the evidence presented confirm that the Certificate of Lawfulness for existing use can be issued. As such, it is recommended that a certificate of lawful use be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/20/00154:

Havant Borough Council, as Local Planning Authority, certifies that on 21 February 2020 the use described in the First Schedule to this certificate in respect of land described in the Second Schedule and as shown edged red on the submitted Location Plan received 21 February 2020 was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

It appears to the Local Planning Authority on the balance of probability that the uses described in the First and Second Schedules and plan attached to this Certificate, 2No mobile homes referred to as Caravan A (sited to the eastern boundary of the land holding) and Caravan B (sited to the southern boundary of the land holding), have been continuously sited at Westcroft Stables and used for purposes ancillary to the existing commercial equestrian use for more than 10 years before the date of the application.

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness relating to 2No mobile homes referred to as Caravan A (sited to the eastern boundary of the land holding) and Caravan B (sited to the southern boundary of the land holding) to continue to be sited at Westcroft Stables and used for purposes ancillary to the existing commercial equestrian use, as described in the written particulars, plans and other documents submitted with your application received on 21 February 2020.

SECOND SCHEDULE:

This certificate relates to land at 147 Havant Road, Hayling Island, PO11 0LF as shown edged red on the submitted Location Plan received 21 February 2020.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 191 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus was not liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.