
Site Address: Land to the west of Copse Meadow Lodge, Copse Lane,
Hayling Island

Proposal: Lawful Development Certificate for Lawful Use of the land for open storage, storage units, building used for storage and car repairs & caravan dwellings in continuous use for more than 10 years.

Application Type: Certificate of Lawfulness

Application No: APP/23/00766 Expiry Date: 20/12/2023

Applicant: Mr Robert Bond

Agent: Mr I Murray Case Officer: Lesley Wells

Ward: Hayling West

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

Land to the west of Copse Meadow Lodge, Copse Lane, Hayling Island

2 Planning History

90/52113/1 - Change of use to land primarily used for the keeping of horses (with ancillary agricultural use) and the erection of 7 animal pens, 1 tack room and 2 field shelters' granted on 20/9/90. Condition 3 on the permission, required "All the buildings and caravans situated within the area hatched blue on the approved shall be permanently removed before the animal pens hereby permitted are first used..." Drawing No. SB2/90 shows that within the area the subject of the application an 'animal pens' , with a 'concrete apron'. Land to the south is annotated 'field shelters' albeit only one is shown. Land to the rear is annotated for the 'keeping of horses'.

92/52113/9 - Tractor & machinery store with hayloft granted 21/10/92

04/52113/014 - 3/11/06 a Lawful Development Certificate (LDC) was refused for 'Outdoor storage of construction materials, vehicles and machinery, on areas marked A & B and outline in red and use of barn marked "X" all on Plan GGA/1'. On 28 August 2006 the subsequent appeal against the refusal of the LDC was withdrawn.

06/52113/015 - Change of use from Barn to Light Industrial - refused 2/11/06 - Drawing No. 400.02A shows an area where the caravans are currently sited, annotated as 'Boat & caravan parking area'.

APP/22/01193 - Retrospective application for siting of 37 storage containers and 5 residential caravans, WD,23/08/2023

3 Proposal

- 3.1 Lawful Development Certificate for Lawful Use of the land for open storage, storage units, building used for storage and car repairs & caravan dwellings in continuous use for more than 10 years.

4 **Statutory and Non Statutory Consultations**

Business Rates - Paid since 2010 for the building and premises

Councillor Brenda Linger - Hayling West - No comment

Councillor Julie Richardson - No comment

Councillor Leah Turner - Hayling East - No comment

Councillor Mark Coates - No comment

Councillor Paul Gray - No comment

Councillor R Raines - Hayling East – No comment

Havant Council Tax - No comment

5 **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: 2

Comment	Officer Comment
Absolutely rubbish that it's just storage. Operate seven days a week at all hours unacceptable to residential amenity probably more than five mobile homes on the site Car repairs operating from the site - cause of noise pollution light pollution hazardous waste fumes etc Big trucks & diggers on site	Other than the comments relating to the mobile homes and that a car repair business is operating from the site the planning comments are not relevant, as the application is determined on the facts of the case and legal interpretation.

If granted further businesses may operate from the site - detrimental to residential amenity	
Many more than four cars enter the site daily - would increase if all of the 30 containers are rented	
Object on highway safety grounds	

6. Legal Considerations.

- 6.1 The onus of proof in an LDC application is firmly on the applicant, however, an LPA should always cooperate with an applicant seeking information they may hold about the use of the land.
- 6.2 The Government's Planning Practice Guidance (PPG) states that: 'In the case of applications for existing use, if a local planning authority has no evidence itself, nor 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 that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.
- 6.3 In order to grant a Certificate of Lawfulness for the use the Local Planning Authority must first be satisfied as to the planning unit; and that the use of the building on the land for car repairs, the use of the land for the siting of storage rental units (ie containers) and use as a caravan site are lawful. The test is whether, on the balance of probability, the land has been in this use for a continuous period of at least 10 years up to the date of the application (13th November 2023).
- 6.4 The red line area for the application includes the access road and the yard area. The evidence provided indicates that the caravans and items stored on the land have moved around the yard over the years.
- 6.5 **Evidence Provided by the Applicant:**

Undated supporting statement

Clear the site has been used as a storage yard and premises since at least 2010 - site visited and assessed for commercial rates - appendix 1 - such rates continue to be paid.

Whilst caravans have always been on site historically, they have been moved about and been updated/replaced in that time.

Use of the site for residential caravans also visible on Google Earth for the whole of the 10-year period. In addition, signed affidavits provided, 3 of which (2nd Tenant, 5th Tenant & 1st Tenant) have lived at the site permanently for the whole 10-year periods. Others have been short-term residents over the 10-year period.

The site has been regularly used and visited by the local business community and current and previous councillors who have provided affidavits (set out below) stating that the site has been in continual use for the whole 10-year period or longer for open storage, container storage and continually occupied residential caravans.

Affidavits

1. 15.9.23 – Applicant (who jointly owns the property with his wife), which includes the following information:

Paragraph 1 confirms ownership of the Property, which includes the application site and land adjoining at Copse Lane, which does not fall within the land that is the subject of the application.

Paragraphs 5-7 - states that when he purchased the property there were two caravans (Vans 1 and 2) on the land which were occupied by the First Tenants who did not pay rent. They moved out in or about mid-1991.

Paragraphs 8-11 - early in 1990 the applicant purchased a further caravan and placed it at the property, which has remained there ever since. Having regard to the siting of these three caravans and the sketch drawing attached at CRB2, this shows that all three of these caravans were sited outside the red line that is the subject of the application.

Paragraph 12 refers to the purchase of two further caravans stationed at the Property (defined as the land within the red line and land at what is now known as Copse Meadow Lodge), and that whilst the caravans have not always been in the same position at the Property, "...the five caravans have always been situated and stationed there and have been occupied throughout that period..."

The following relates to Tenants from September 2002 or thereabouts.

Paragraph 12.1 - Van 1 was occupied and rented to 1st Tenant in or about September 2002 living there continuously until December 2019 - at that point it had been occupied for 11 years. This gentleman then returned in February 2013 and has lived there continuously throughout that period to date, for a further 10 years (these two periods of occupation are confirmed in 1st Tenant's affidavit).

Paragraph 12.2 - Van 2 was rented to 2nd Tenant late 2009 and he has lived in it continuously since for nearly 14 years (this period of occupation is confirmed in 2nd Tenant's affidavit).

Paragraph 12.3 - Van 3 was first rented to 3rd Tenant (now in Van 5) who took up occupation in the Easter of 2009 and lived continuously in this Van until the summer of 2015, for six years. Van 3 was then rented immediately to 4th Tenant who occupied continuously to date, for a period of 8 years. Together the period of occupation of Van 3 amounts to over 14 years (these periods of occupation are confirmed in the affidavits of 3rd Tenant & 4th Tenant).

Paragraph 12.4 - Van 4 was first occupied by 5th Tenant and 6th Tenant who occupied it in or around June 2008, living in it continuously until the present date - over 15 years (this period of occupation is confirmed in the affidavit of 5th Tenant).

Paragraph 12.5 - Van 5 was first occupied by 7th Tenant in the spring of 2010, who occupied it continuously until the autumn of 2014, for 4.5 years. Shortly after 8th Tenant rented the Van, occupying it until mid-summer 2021. 3rd Tenant moved into the Van in mid July 2022 and continues to occupy it (this is confirmed in the affidavits of 7th Tenant, 8th Tenant and 3rd Tenant).

Paragraph 12.6 - refers to the paying of business rates for the premises, including the 5 caravans since 2004 and that the applicant has been unable to find the business rates dating back to 2010.

Paragraph 12.7 - refers to the paying of electricity for the five caravans since the early 1990s.

Paragraph 12.8 - has been paying water bills for the caravans since he purchased the site in 1989, with such bills being provided since 19 October 2010 - which are those he has been able to find.

Paragraph 12.9 - until 2016 foul water from the caravans drained into a cesspit, when arrangement was made to link into the foul drainage system - confirmed by correspondence from James Hennessy Construction Ltd and Southern Water.

exhibits:

CRB1 - Official copy of register of title: Sets out the Proprietors 18/7/1989 & HM Land Registry Plan Title Number HP334363

CRB2 - Sketch plan of site, showing caravans (outside the red line site) and structures on the land, together with part of a letter dated 29/3/90 from Third Party

CRB3 - National Non-Domestic Rates Bills for Store & Premises dated:

29.9.10 - includes payment details

10.5.12, includes payment details

11.3.13, includes payment details

13.3.17, amount due 0.00

13.3.18, amount due 0.00

13.3.19, amount due 0.00

24.3.21, amount due 0.00

11.3.22, amount due 0.00

CRB4, Castle Water bills dated:

29.11.22

31.5.22

4.6.21

5.6.21

5.6.21

2.12.20

5.6.20

9.6.19

4.12.1?

25.5.18

20.9.18

27.4.17

3.11.16

CRB5 - letter dated 8.8.16 from Southern Water confirming inspection of sewer connection and that the connection is to the public sewer.

Letter dated 14.7.16 from James Hennessy Construction Ltd., providing a quotation to connect to the public sewer by the laying of 8 metres of 100 diameter vc pipe, shingle and backfill.

2. 16.9.23 – 8th Tenant – use of Van 5 Between Easter 2015 until mid-summer 2021
3. 16.9.23 – 1st Tenant – use of Van 1 from September 2000 (approximately) until December 2009. Then lived in Van 1 from February 2013 until now.
4. 16.9.23 – 7th Tenant – use of Van 5 between Spring 2010 until Autumn 2014
5. 16.9.23 – 2nd Tenant – use of Van 2 between late 2009 to present
6. 17.9.23 – 3rd Tenant – use of Van 3 from Easter 2009 until summer of 2015. Then in mid-July 2022 started renting Van 5 until now.
7. 17.9.23 – 5th Tenant – use of Van from June 2008 (approximately) until now
8. 18.9.23 – 4th Tenant – use of Van 3 from summer of 2015 until now.

Four Affidavits updating earlier affidavits received 12/2/24, (The year '24' referred to in the three of the following Affidavits appears to be a typographical error)

9. 12.2.24 – 2nd Tenant of Van 2 referring to previous affidavit dated 16/9/23 confirming that there were five residential caravans on site from 2012 onwards.
10. 12/2/24 – 7th Tenant referring to previous affidavit dated 16/9/23 confirming that there were five residential caravans on site from 2012 onwards.
11. 12/2/24 – Third Party referring to previous affidavit dated 5/11/23 confirming that there were five residential caravans on site from 2012 onwards.
12. 12.9.24 – 1st Tenant of Van1 referring to previous affidavit dated 16/9/23 confirming that there were five residential caravans on site from 2012 onwards.

These 12 affidavits contain information about the residential use of the caravans on the site, with 4 confirming there have been five residential caravans on site from 2012 onwards.

From the evidence, it appears that there were residential caravans on the land now known as Copse Meadow Lodge but it is not clear whether these caravans historically were on land within the red line of this application or not. In 1990 an additional caravan was brought onto the land and at an unspecified point later a further two caravans were brought onto the land. Again, it is not clear whether any or all of these were within the red line application site or have moved into/off this area since that time. Since being placed on the land these caravans have been used for at least some of the time for residential purposes. Prior to the submission of the four additional affidavits, the evidence in the affidavits covered 10 continuous years up to the application date in respect of Vans 1, 2, 3 and 4. The evidence for Van 5 did not show continuous use. However, this is clarified by the additional four affidavits which provide evidence of the stationing and use of five residential caravans on the site since 2012 onwards, with the relevant period for a Lawful Development Certificate being 10 years back from the date of the application, which was validated on 25/10/23. Therefore, the starting date for the 10 year period is 25/10/13. The evidence in the more recent four affidavits states that five caravans have been stationed on the land for residential purposes from 2012 onwards.

9. 9.11.23 - Third Party - for the past seven or eight years has had a container at the yard shown edged green on the Plan marked as 'Yard'. Since the early 1990s visited the property and seen continual use of the Yard for:

"8.1 open air storage of all manner of things including vehicles, caravans, lorries

and boats as well as for storage containers and

8.2 the continual use of the caravans at the Yard by residents since 2009"

10. 8(?).11.23 - Third Party - for the past 14 years continual use of the Yard as per 8.1 and 8.2 above.
11. 9.11.23 - Third Party - Hayling Scouts have had a container at the Yard since the late 1990s. Visited over the last 30 years and have seen the continual use of the Yard as per 8.1 and 8.2 above.
12. 8(?).11.23 - Third Party - since 2012 visited the property and seen the continual use of the Yard as per 8.1 and 8.2 above.
13. 8.11.23 - Third Party - for the past two years has stored between two and twelve vehicles at any time in the Yard. Since 2009 seen the continual use of the Yard as per 8.1 and 8.2 above.
14. 9.11.23 - Third Party - past 8 years stored a container in the Yard. Since 2000 seen the continual use of the Yard as per 8.1 and 8.2 above.
15. 11.11.23 - Third Party - since 2012 aware of the outside open storage yard and residential caravans in use. Also visited 2nd Tenant, where he lives in one of the residential caravans.
16. 17.1.24 –Third Party– the applicant had a barn built at the property in or around 1996. Since 2000 to the current date has used the area in the barn shown edged red on the floor plan marked 'AG1' for the storage of his mini digger, trailer and various building equipment items continuously and through the period, in exchange for which the applicant had use of the plant and equipment.
17. 17.1.24 - Applicant – in or around 1995 had the barn constructed and in 1998 arranged for the insertion of a first-floor edged red on plan marked 'CRB1'. Since 1995 he has used the whole of the ground floor of the barn continuously to date for the storage of numerous items including motor parts, scales, tills, various machinery parts, building materials, stone pots, flowerpots, figurines whilst he had a shop selling groceries. Also used the area for the storage of fruit, vegetables and tinned goods. In 1998 when the first floor was constructed, he moved the stone pots, flowerpots and figurines to the first floor of the barn for safekeeping until the sale of his shop in 2004. Since 1998 used the whole of the first floor continuously to 2004 for the storage of said garden items when shop was sold in 2004, he then used the whole of the first floor for the storage of classic car parts.
18. 17.1.24 –2nd Tenant – lived at Van 2 since late 2009, continuously to now. Since late 2009 he stored motorbike, work tools, various change chains and lashings continuously and to date as well as escort vehicle whenever necessary in the area of the barn edge red on the plan marked 'DPM1'.
19. Three affidavits dated 11/1/24 refer to the business use of the building within Vehicle Repair Areas 1 and 2, which state:
 1. 1st Affidavit - states that he utilised car repair facilities shown on Vehicle Repair Areas 1 and 2 since early 2012, undertaking specific vehicle repair jobs. In September 2019 he joined TowaFrame Ltd who then rented Vehicle Repair Areas 1 and 2 on a permanent basis. Also aware of a number of other people

that hired spaces in Areas 1 and 2 for specific vehicle repair jobs from early 2012 to September 2019.

2. 2nd Affidavit states that between 2010 and September 2019 he used the car repair facilities in Areas 1 and 2 for specific vehicle repair jobs on numerous occasions. In exchange he would carry out vehicle repairs gratuitously for the owner. In 2019 he was no longer able to use the said vehicle repair spaces, as let out to a third party on a permanent basis.
3. 3rd Affidavit – Director of TowaFrame Ltd. Since September 2019 the Company rented the car repair facilities shown as Areas 1 and 2 on a permanent basis and has continually used them throughout that time.

Google Earth Images dated 2004, 2007, 2011, 2015 and 2019. _

All of these images show some form of open storage taking place on the yard, although the amount fluctuates and increases in later photographs. The photograph from 2019 shows storage containers clearly on the land. It is not clear simply from looking at the photographs which (if any) items are caravans.

Response to the Council's letter dated 26.9.22 confirmed by Two Third Parties

6.6 LPA's evidence

On case file

Confirmation that Business Rates have been paid for the use of the land, covering a store and premises, together with unsurfaced, unfenced land for Copse Meadow Farm. Paid since 2010

Confirmation from the Council's Licensing Team, that the site does not have a Caravan Site Licence

Google & GIS aerial photographs dated 1999, 2001, 2004, 2005, 2007, 2011, 2013, 2015, 2018, 2019.

Planning History

90/52113/1 - Change of use to land primarily used for the keeping of horses (with ancillary agricultural use) and the erection of 7 animal pens, 1 tack room and 2 field shelters granted on 20/9/90. Condition 3 on the permission, required "All the buildings and caravans situated within the area hatched blue on the approved shall be permanently removed before the animal pens hereby permitted are first used..." Drawing No. SB2/90 shows that within the area the subject of the application an 'animal pens' with a 'concrete apron'. Land to the south is annotated 'field shelters' albeit only one is shown. Land to the rear is annotated for the 'keeping of horses'.

92/52113/9 - Tractor & machinery store with hayloft granted 21/10/92

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Third party information provides some support for the commercial use of the land and use of mobile homes, but the information provided is not set within a time frame of the uses.

7 Assessment of Evidence

- 7.1 The application is for use of the land for open storage, storage units, building used for storage and car repairs & caravan dwellings in continuous use for more than 10 years. The planning unit for the application is considered to be the submitted Site Plan, edged in red, which excludes Copse Meadow Lodge, the address of the applicant to the east.

Residential Caravan Use

- 7.2 The evidence produced in support of the application indicates that five caravans have been stationed on the land and used residentially in excess of 10 years. There is a degree of ambiguity with the evidence, which is discussed further below.
- 7.3 In respect of the Business Rates, this does not relate to the residential use of the caravans, but to a 'Store and Premises' at Copse Meadow Farm. There is no evidence that Council Tax has been paid for the residential caravans.
- 7.4 It is noted that no copies of tenancy agreements have been provided in respect of any of the occupiers, nor have business accounts setting out the rent received in respect of the caravans, where clearly such payments were received during the period of occupation, as some of the affidavits from the tenants refer to renting the caravans.
- 7.5 The site also does not have a caravan site licence, which is understandable, as this would only follow once planning permission had been granted for a caravan site. That said, the caravan use of the land only came to the attention of the Licensing Team in 2022.
- 7.6 In 2004 an application for a Lawful Development Certificate (LDC) was submitted by the applicant for the 'Outdoor storage of construction materials, vehicles and machinery' under reference 04/52113/9. The associated submitted drawing GGA/1 identified two red areas A & B where it was claimed the use of the land operated from. Area A edged in red on Plan GGA/1 is the area currently used for the siting of caravans and containers and described in the affidavits as a Yard. Whilst the applicant has advised at paragraph 12 of his affidavit that the caravans have not always been in the same position, the affidavits provided by those claiming to have lived in the caravans do not refer to the caravans being moved during their occupation. This suggests that none of the residential caravans were located in the Yard in 2004, although this clearly pre-dates the 10 year period required to be shown in order for the caravan use to be lawful, and, of the occupiers who have given affidavits, none have lived there before 2008 at the earliest.

- 7.7 What undermines the applicant's version of events to a degree is an aerial photograph dated 8 August 2013. This appears to show, at most, one caravan sited on the southern boundary of the site, with no indication of its use at that time. Whilst not conclusive the aerial photograph appears to show the location of Caravan 2 on the Site Plan, with nothing showing where Caravans 1, 3, 4 & 5 are located, other than what appears to be vehicles and some small structures. However, it should be noted that the aerial photograph was taken before the 10 year period commenced, which limits the weight that may be given to this evidence. The agent suggested that the aerial photograph shows 2 caravans on the land in 2013, with the submitted affidavits stating that there have been 5 caravans on the site since 2012, used residentially. The current siting of the 5 caravans, as shown on the Site Plan, has been noted by Officers during relatively recent visits to the site.
- 7.8 As to the water bills these only cover the period since 2016. Such a utility would also have been required for the vehicle repairs business operating from the building on the site. That said, all of the utility bills are addressed to Copse Meadow Lodge, the applicant's address, not Copse Meadow Farm the address given in the affidavits provided by the occupiers (both by current and former occupiers) of the 5 caravans.
- 7.9 As to the letter dated 14.7.16 from James Hennessy Construction Ltd., the works provided were a link into the public sewer that crosses part of the site to the south. These works only covered the laying of 8 metres of 100 diameter vc pipe, shingle and backfill. According to the Council's records there is an existing foul sewer that crosses the site to the south, which accords with Southern Water's records. Caravan 3 is located the closest to this public sewer, which is approximately 70m to the south, not the 8m provided by James Hennessy's company. So, it is difficult to understand, on the information provided, how the laying of 8m of pipe work would have linked into the site to the public sewer to the south. As to Southern Water's letter this just confirms that *"The inspection of your sewer connection has been carried out"*. The address given on this letter is Copse Meadow Lodge.
- 7.10 It is acknowledged that due weight must be given to the affidavits provided which state that a residential use of at least five caravans has been taking place for a continuous period in excess of 10-year, however such weight is undermined to a degree by the lack of specificity regarding the location of the five caravans over the period, the lack of a caravan site licence and the aerial photograph dated 2013 (which pre-dates the relevant 10 year period) with the applicant's agent suggesting 2 caravans were shown on the land in this photograph, with four affidavits stating that 5 caravans have been on the land since 2012.
- 7.11 The agent has also suggested that, having looked at the evidence again regarding the number of caravans at the yard, the *"...2015 Google Earth image clearly shows three of the larger caravans and two smaller ones (one to the south of the barn and another north of the third caravan), these are the 5 vans referred to. I believe the two smaller units were later upgraded to the larger units in the 2019 google earth image, the smaller unit that remained ceased use as a home and became a storage unit at some point between 2015 and 19."*
- 7.12 In assessing the submitted evidence residential caravans have moved around the application site some of which have been replaced by larger units. The aerial photograph of 2015 does not cover the required 10 year period from the date of the application. That said, this may help to explain why 5 caravans do not appear to be

readily visible on the site in the aerial photograph dated 2013, due to them being moved around the site or possibly being moved off, before being replaced after the aerial photograph was taken, which is just a snapshot of the development on the ground when the photograph was taken. Also, the date of the 2013 aerial photograph is the 8 August 2013 which is before the start of the 10 year period, which limits the weight that may be given to this evidence.

- 7.13 When the evidence in totality is reviewed there is a degree of ambiguity as to whether there were five caravans within the red line application site during the 10-year period. However, on balance, it does appear that there have been 5 residential caravans within the red line site for at least 10 years and the ambiguity is not of such a level to contradict or otherwise make the applicant's version of events less than probable.

Use of land for open storage and siting of rental storage containers

- 7.14 In a Supporting Statement the following is stated:

*"Business activity commenced 1990
Day and Times of Operation - 7am-7pm 6 days a week".*

- 7.15 The sketch plan provided by a Third Party dated 'Feb' 90' (CRB2) does not show any storage units on the land. As to National Non-Domestic Rates, the first date of issue for Copse Meadow Farm was 10/5/2012. The Council's records show the storage area as 1188m². It does not confirm what the use of the storage area is. Also, in the aerial photograph of 2001 no containers are shown on the land.
- 7.16 The affidavits provided refer to the siting of storage containers within the Yard. The withdrawn application under reference APP/23/01193 included reference to 37 storage containers. No evidence was provided within this application as to when the use commenced.
- 7.17 In 2004 the applicant applied under reference 04/52113/14 for an LDC for 'Outdoor storage of construction materials, vehicles and machinery, on areas marked A & B and outline in red and use of barn marked "X" all on Plan GGA/1'. Area A edged in red on Plan GGA/1 is the area currently claimed to be used for the siting of caravans and storage containers ie the Yard, whilst in 2004 it was claimed to be used for the storage of construction materials, vehicles and machinery, which undermines the applicant's version of events as to how the land has been used since 1989, albeit, the test would be 10 years back from the date of this application.
- 7.18 As to aerial photograph dated 2013 this appears to show some containers on the land, together with a number of vehicles. No rental agreements for the storage containers have been provided, nor has any business accounts showing payment for these storage units been submitted.
- 7.19 Google Earth Images provided by the applicant dated 2004, 2007, 2011, 2015 and 2019.
- 7.20 All of these images show some form of storage within the Yard.

2004 image is blurred and therefore it is not possible to state what the storage is within the Yard.

2007 image is clear and shows storage in the Yard, with possibly one caravan on the

southern boundary.

2011 image is blurred, with less storage in the Yard, but not possible to state what the storage is.

2015 image is clear and appears to show the location of caravans and other items which may include containers and vehicles within the Yard.

2019 image is clear and would appear to show the siting of 5 caravans within the Yard together with containers and vehicles.

- 7.21 Google & the Council's GIS aerial photographs dated 1999, 2001, 2004, 2005, 2007, 2011, 2013, 2015, 2018, 2019, 21 & 22.

1999 image is clear with two items stored in the Yard, which do not appear to be containers.

2001 image is clear with two items stored in the Yard, which do not appear to be containers.

2004 image is blurred and therefore it is not possible to state what the storage is within the Yard.

2005 image is clear showing storage in the Yard, with possibly one caravan along the southern boundary.

2007 image is clear and shows storage in the Yard, with possibly one caravan on the southern boundary.

2011 image is blurred, with less storage in the Yard, but not possible to state what the storage is.

2013 image is clear, showing a reduced level of storage in the Yard, with possibly one caravan along the southern boundary.

2015 image is clear and appears to show the location of 3 caravans and other items which includes containers and vehicles within the Yard.

2018 image is clear and appears to show the location of 5 caravans, together with containers within the Yard.

2019 image is clear and would appear to show the siting of 5 caravans within the Yard together with containers and vehicles.

2021 image is clear and appears to show the siting of 5 caravans within the Yard together with containers and vehicles.

2022 image is blurred and would appear to show the siting of 5 caravans within the Yard together with containers and vehicles.

- 7.22 Agent's email dated 21/12/23 states that:

"In terms of business rates they relate to the building and the premises so it covers both the building and the outdoor storage."

- 7.23 The affidavits when read together, cover a period dating back 30 years for open storage, including containers and the residential use of caravans at the Yard, which would take the use back to 1993 or thereabouts. This evidence is undermined to a degree by the aerial photographs dated 1999 and 2001, which does not show any such storage in the Yard area. That said, storage within the Yard area is shown on aerial photographs from 2004 onwards, which has clearly fluctuated over the years, with 2013 photograph showing just a few containers. However, it is recognised that this aerial photograph is just a snapshot of the use of the land on the day that the photograph was taken. Whilst it is not possible to clearly state what items were stored on the land, it would appear, on the balance of probability, that the land has been used for open storage for a period in excess of 10 years.

Use of a building for car repairs and storage

- 7.24 The use of the building now forms part of the application for a lawful development certificate. As to evidence this has been provided in the form of Business Rates paid since 2010 for a 'store and premises', three affidavits and representations from third parties, which indicates the building has been in commercial use since at least 2010. The agent has also advised that:

"The building is mainly used for storage although the Applicant uses it for personal car repairs and for a company that installs towing points to cars. It has had car related activities undertaken in the building by multiple users over the ten year period but this has been done on an informal basis. In terms of business rates they relate to the building and the premises so it covers both the building and the outdoor storage."

- 7.25 The aerial photographs show vehicles stored/parked on the land, which supports the contention that some form of vehicle related activities was undertaken within the red line application site.
- 7.26 The three affidavits from Third Parties set out above shows on the balance of probability that the barn has been used for commercial purposes in excess of 10 years.
- 7.27 The LPA's evidence supports the commercial use of the building and premises, albeit not their actual use(s). However, based on the evidence provided on the building's use, on the balance of probability, it is considered that the building has been used for commercial vehicle related activities and for storage purposes in excess of 10 years.

8 Conclusion

- 8.1 On balance, it does appear that there have been 5 caravans stationed on the land and used for residential purposes within the red line site for at least 10 years and the ambiguity of the evidence of such a use is not of such a level to contradict or otherwise make the applicant's version of events less than probable. Such a use is therefore lawful.
- 8.2 Whilst it is not possible to clearly state what items were stored on the land, it would appear, on the balance of probability, that the land has been used for open storage for a period in excess of 10 years. Therefore, such a use is lawful.
- 8.3 Evidence has been provided that those parts of the building marked Vehicle Repair Area 1 (i.e. 37m²) and Vehicle Repair Area 2 (i.e. 37 m²) on the annotated Floor Plan have been in a continuous Class B2 use (first for vehicle repairs and lately for towbar fitting) for a period in excess of 10 years, and therefore the use of these parts of the building for a Class B2 use is lawful. Vehicular access to these areas is via the roller shutter door, with the section between these two areas used for the nightly storage of vehicles.
- 8.4 Evidence has been provided that the remainder of the ground floor and the first floor of the building has been in use for storage (Class B8) for a period in excess of 10 years and therefore is lawful. The lawful Class B8 use of the building is confined to the areas shown as storage areas on the annotated Floor Plan.
- 8.5 Therefore it is recommended that a Lawful Development Certificate be issued for the use of the areas shown as Vehicle Repair Area 1 and Vehicle Repair Area 2 on the

annotated Floor Plan for vehicle repairs and towbar fitting (Class B2) and use of the areas shown as storage areas on the annotated Floor Plan for storage (Class B8). The Council's Legal Section concur with this recommendation.

- 8.6 Therefore, a Lawful Development Certificate can be issued for the following development:

“The use of part of the land for open storage (including the stationing of storage containers) (Class B8) and the siting of up to five caravans for residential use within the red area shown on the Site Plan (drawing no. A102) (Class C3), the use of the areas of the building marked as Vehicle Repair Area 1 and Vehicle Repair Area 2 on the annotated Floor Plan for vehicle repairs and towbar fitting (Class B2) and the use of the areas shown as storage areas on the annotated Floor Plan for storage (Class B8) as described in the written particulars, plans and other documents submitted with your application on 27 September 2023, 21 November 2023, 21 December 2023, 17 January 2024 and 12 February 2024. On the balance of probability, all these uses have been carried on for a period in excess of 10 years leading up to the date of the application.”

- 8.7 Section 191(4) of the Town and Country Planning Act 1990 provides as follows:

“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.” (emphasis added)

- 8.8 Section 193(4) goes on to say:

*“A certificate...may be issued—
(a) for the whole or part of the land specified in the application; and
(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them...”* (emphasis added)

- 8.9 Therefore, although the proposed wording of the certificate differs from that in the application, the Council is permitted to substitute its own wording based on what it considers to be lawful.

- 8.10 The Council's Legal Team concurs with this assessment.

9 RECOMMENDATION:

That the Head of Place be authorised to **Grant a Certificate of Lawfulness** for application APP/23/00766 in the following terms:

Wording for decision notice:

Havant Borough Council, as Local Planning Authority, certifies that on 25 October 2023 the development described in the First Schedule to this certificate in respect of land

described in the
Second Schedule and as shown edged in red on the submitted location plan was
lawful within
the meaning of section 191 of the Town and Country Planning Act 1990 (as amended)
for the
following reason(s):

On the balance of probability, all the uses described in the First Schedule in respect of
land described in the
Second Schedule have been carried on for a period in excess of 10 years leading up
to the date of the application.

FIRST SCHEDULE:

This certificate relates to the following development:

The use of part of the land for open storage (including the stationing of storage
containers) (Class B8) and the siting of up to five caravans for residential use within
the red area shown on the Site Plan (drawing no. A102) (Class C3), the use of the
areas of the building marked as Vehicle Repair Area 1 and Vehicle Repair Area 2 on
the annotated Floor Plan for vehicle repairs and towbar fitting (Class B2) and the use
of the areas shown as storage areas on the annotated Floor Plan for storage (Class
B8) as described in the written particulars, plans and other documents submitted with
your application on 27 September 2023, 21 November 2023 , 21 December 2023, 17
January 2024 and 12 February 2024.

SECOND SCHEDULE:

This certificate relates to land to the west of Copse Meadow Lodge, Copse Lane,
Hayling Island as shown edged red on the submitted Location Plan received 27
September 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Section 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 would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been 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 Secretary of State, if you are aggrieved by the Council's decision.