
Site Address:	Land opposite Copsewood House, Copse Lane, Hayling Island		
Proposal:	Lawful development certificate for the existing use of the land for the siting of mobile homes and the re-instatement of a mobile home		
Application Type:	Certificate of Lawfulness		
Application No:	APP/22/00541	Expiry Date:	20/10/2022
Applicant:	Mrs. Z Good		
Agent:		Case Officer:	Tina Pickup
Ward:	Hayling East		

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

1 Site Description

- 1.1 Copse Lane is a rural road located in the north-eastern area of Hayling Island, that is characterised by intermittent development and sporadic properties, surrounded by hedgerows and fields. The area lies outside the defined urban area by policy AL2 of the Allocations Plan, and as such in the 'non-urban' area of Hayling Island where the restrictive rural policies of the NPPF apply.
- 1.2 The application site comprises a strip of land within a wooded copse located on the north side of Copse Lane, adjacent Finchwood Farm Industrial Estate and opposite a detached dwelling, Copsewood House. The wooded copse covers about 0.58ha and is covered by Woodland TPO No 1878. It is also a designated SINCE site. For years the wooded copse had been left unattended and allowed to grow naturally into a dense area, until April 2021 when some unauthorised clearance of the trees within the copse took place. As a result of these unauthorised clearance works Enforcement colleagues visited the site at the time as part of their investigations.
- 1.3 The red lined application site specifically relates to the central third of the wooded copse only, and comprises a parcel of land about 20m wide by about 95m long. This parcel of land has no defined boundaries and as such is difficult to visually determine on site. The applicant owns this central parcel of land, and the Finchwood Farm Industrial Estate to the west, but not the intervening strip of land between, nor the strip to the east, which are outside the application site.
- 1.4 The original vehicular access to the whole wooded copse was taken in the south-western corner of the site, adjacent the Finchwood Farmhouse Industrial estate entrance. However, in connection with the unauthorised tree works in 2021, a new vehicular access point opposite Copsewood House was created with hard core and two five-bar gates have since been erected. The formation of this vehicular access point has not received planning permission and is subject to ongoing Enforcement enquires.
- 1.5 This unlawful access point does however provide direct access to the red lined application site. Set back about 25m into the red lined application site, towards its western boundary, are two dilapidated old structures. One is an old pre-fabricated garage type structure and the other a small part brick, part timber outhouse sited behind. Both are completely overgrown and unused. The larger garage structure has evidence of former electricity supply.

- 1.6 The planning history of the site is relevant. On 19 March 1963 planning permission was granted for "The Siting of One Caravan" under reference 15035/1. The conditions did not limit the occupation of the caravan in any way, but did stipulate that there should be only one caravan on the site at any one time. They also required no caravan to be stationed within 10ft of any highway or 5ft of any boundary of the site. The 1963 red lined application site corresponds to the current red lined application site i.e. it was for the central strip of the woodland only. A Caravan Site Licence reference 166, was also issued by the Council on 19 March 1963 for the same central strip application site for the siting of a single caravan. Condition 5 of that Licence however restricted the occupation of the caravan as follows:
"No caravan shall be used on the site for human habitation except between 1st March and 31st October in any year."
- 1.7 The supporting submission documents include photographs of an old dilapidated caravan on the site, although it is not clear precisely where this caravan was sited within the wider wooded copse. By the time of the officer site visit on 26/9/22 the old dilapidated caravan had been removed from the site.
- 1.8 The site lies outside any current day flood zone, but is within the future flood zone. The field to the north of the copse is a Candidate site for Solent Waders and Brent Geese.

2 Relevant Planning History

There is extensive planning history for dwellings and caravan sites, on various parcels of the overall wooded copse site from 1948 to 1963, all of which were Refused. The only planning permission on the entire wooded copse site relates to the current red lined application site as follows:

15035/1 - The Siting of One Caravan - Permitted 19 March 1963

Note - the red line application site accompanying this 1963 permission concurs with the current red line application site

3 Proposal

- 3.1 Lawful development certificate for the existing use of the land for the siting of mobile homes and the re-instatement of a mobile home
- 3.2 The above description has been used, based on the information submitted at question 8 and 10 of the planning application form, the additional section 10 justification document, and other supporting documents. These documents refer to two former mobile homes on the site, and infer the re-instated mobile home would be used for primary residential accommodation. The precise grounds of making the claim that such a use would be lawful is not clear, despite clarification having been sought during the determination of this application.

4 Policy Considerations

Town and Country Planning Act 1990 as amended
Caravan Sites and Control of Development Act 1960
The Caravan Sites Act 1968

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Arboriculturalist

A significant amount of tree and vegetation clearance has been carried out. However, according to records, there should be a number of statutorily protected trees onsite and on adjacent land. No arboricultural information has been submitted to demonstrate that existing trees have been considered and it is unclear as to what work has been carried out or whether it was done so with consent.

County Ecologist

The site is situated within North Copse Site of Importance for Nature Conservation (SINC), listed as an area of semi-natural woodland of ancient origin (but too small to be listed on the Ancient Woodland Inventory). It is clear that the site has been subject to mismanagement/damage in the past, with various pieces of now-derelict infrastructure present plus woodland clearance having taken place. These actions will undoubtedly have damaged the ecological value of this fragment of ancient woodland, a very scarce habitat on Hayling Island.

In essence, I have no fundamental issue with a new/replacement mobile home being sited here within an existing clearing: it is unlikely that this area is of high ecological value at the current time and a single static home would not be likely to cause further damage. From an ecological perspective, the most appropriate action would be to remove all other detritus and to allow the natural regeneration of the woodland. Tree planting is not recommended in principle: there will be ample existing stock to facilitate natural regeneration, although certain species e.g. non-native shrubs such as laurel may require targeted removal. Ancient woodlands should not be subject to artificial lighting or hard surfacing e.g. for access.

In summary, this is an opportunity to try and restore the biodiversity value of this ancient woodland and if this can be facilitated through permitting a single static home then that would be a beneficial outcome overall. I would welcome further details on how the site will be restored and its biodiversity value enhanced.

Forestry Commission

None received

Hampshire Wildlife Trust

None received

Natural England Government Team

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have a likely significant effect on:

- Solent and Dorset Coast SPA
- Portsmouth Harbour SPA and Ramsar Site
- Chichester and Langstone Harbours SPA
- Solent Maritime SAC
- Solent and Southampton Water SPA

Your Authority will need to undertake a Habitats Regulations Assessment (HRA) to determine whether the proposal is likely to have a significant effect on the sites named above, proceeding to the appropriate assessment stage where significant effects cannot be ruled out. The following information is required to inform a HRA:

- Consideration of this project's effects on total nitrogen and/or total phosphorus nutrient loading within the Solent catchment, including a nutrient budget calculation
- Details of proposed mitigation measures to address any nutrient impacts, including appropriately funded management and monitoring, and details of how the measures will be secured for the lifetime of the development.
- Any other likely significant effects that could arise from the development should also be assessed.

Once the above information is obtained, please consult Natural England on any appropriate assessment your authority may decide to make.

Royal Society for the Protection of Birds

None received

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: 3

Comment	Officer Comment
I rent a Unit at Finchwood Farm, which borders North Copse. I have been here 36 years I can state that there has always been Mobile Homes on this site.	Noted - see section 7
Support the proposal to replace the one dilapidated caravan with a mobile home and for it to be sited where the old one was in the North West corner of the site. But description of development refers to mobile homes and strongly object to this proposal; during the past 27 years there has only been one caravan on this site and this was not used. There was also one small shed with electric. The site has not been used for any other purpose and there has been no Travellers or camping within the last 27 years either.	Noted - see section 7 Discrepancy in number of caravans noted - see section 7

The second entrance that has been opened up recently is of concern being on a blind corner. Cars coming from the north have no vision of a car coming out of the site which would create a danger; the South west entrance is the safest and most sensible place for an access. The application we supported was for one mobile home to be used by the applicants granddaughter; we do not support any application for more than one mobile home.	The creation of a new access requires planning permission and is subject of current Enforcement enquires
What is the point of planning applications when a new static caravan has been brought to site today (10/10/22) but no permission has been granted	Noted - see section 7

Legal considerations

The application is made under Section 191 of the Town & Country Planning Act 1990 as amended and relates to the lawfulness of an existing use. The planning merits of the use, and policies, are not relevant to the determination of this application.

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.

Question 9 on the planning application form indicates that the grounds for making this application are that the use began more than 10 years before the date of this application. Question 10 of the planning application form states that the use began in the 1950's and the established use continued with no change. The evidence submitted in support of the Certificate is as follows:

Evidence submitted

- 1:1250 Site Location Plan
- Section 10 Justification document - indicating two mobile homes on the site since approx 1950's with a utility block and store. Statement says "they lived on the site in their mobile homes". Statement clarifies intention of application is to re-instate a mobile home on the site so that the granddaughter of the applicant can live on the site to be close to her grandmother.

- Statement from Owner - a 22 page document that describes Land at North Copse Proposal
- Series of photographs showing the dilapidated structures and caravan on the site - photos un-dated
- Supporting Statement 1 - from Mrs C Carter
- Supporting Statement 2 - from Mr Moret
- Supporting Statement 3 - from Mr & Mrs Gadd
- Supporting Statement 4 - from Mr A Rogers
- Supporting Statement 5 - from Mrs A Gear
- Supporting Statement from J. Stevens

Evidence on Council's file.

- Planning Permission reference 15035/1 for the siting of one caravan - Permitted 19 March 1963
- Environmental Health Caravan Site Licence No 166 dated 19 March 1963
- Email from Sean Baldock, Planning Enforcement Manager of East Hampshire DC, dated 30 September 2022 referring to a site visit made on 15 April 2021

Assessment of Evidence

The submitted Statements from various neighbours are just letters, they are not signed affidavits. None of these letters include a plan identifying where the caravan(s) were sited. The content of the letters varies, one notes the site was used as a holiday caravan site; others only refer to a single caravan. None specify how the caravan(s) were occupied or when they were last occupied.

The application alleges that two mobile homes have been sited on the land since the 1950's. The only planning permission granted on the site was in 1963 for a single caravan. Therefore it is not likely that two caravans were on the site before 1963 and there should only have been one after 1963. No clear substantive evidence has been provided in relation to the siting of multiple, i.e. two, caravans at all.

Furthermore there is no precise evidence that the single caravan present on the site was within the defined red lined application site or whether it/they were sited on the adjoining land outside the application red line. The photographs provided of the dilapidated old caravan appear to show it within the rear corner of the wooded copse area close to the rear of the units of Finchwood Farm Industrial Units. In particular the 2 photographs on page 5 of the Statement from the Owner clearly show the caravan immediately adjacent to the industrial units. Such a siting is within the north western corner of the wooded copse area which is beyond the red lined application site and does not therefore demonstrate a caravan has been on the application site. The email from Sean Baldock dated 30 September 2022 supports this conclusion as he states that at a site visit made on 15th April 2021 the old dilapidated caravan was at the time sited in this rear north western corner of the wooded area and outside the current red lined application site.

It is accepted that by their very nature caravans are mobile and could have been moved within the site, nevertheless for the 1963 permission to have been correctly implemented and complied with, any caravan must have been sited within the defined red lined application site area, which was the central strip of land within the wooded copse. Current evidence suggests that the caravan remaining on the site was not within the 1963 red lined area, nor the current red lined application site. This sheds doubt on whether the 1963 permission was ever actually correctly implemented.

No substantive evidence regarding the precise siting of the caravan has been provided but it would appear that no caravan has in recent years been sited on the red lined application site whatsoever.

Turning to the question of the use of any caravan, the current application does not specify on what basis the Lawful Development Certificate is being claimed. Reference is made to two separate families living in the mobile homes, but no factual evidence is provided about whether this was as a primary residence or for holiday use. It is not therefore clear whether the alleged occupation was for 12 months of the year or seasonally. However an additional letter provided by the applicant during the course of determining this application came from the daughter of the 1963 applicant and original owner of the site. This letter recalls spending holidays at Hayling Island on the site, spending 2 or 3 weeks there a year clearing the land of brambles and undergrowth. This clearly indicates the occupation of any caravan was as holiday accommodation only.

It is accepted that the 1963 planning permission does not restrict the occupancy of the caravan, but it is noted that the corresponding 1963 Site Licence from Environmental Health did restrict any human habitation to between 1st March and 31st October in any year. Therefore if any caravan was sited on the land in accordance with the site licence, then occupation would only have been seasonal and not as a main dwelling. However it is possible that there was a breach of the site licence and the caravan was occupied on a permanent basis, but no evidence has been submitted to make such a claim. In fact the letter from the daughter of the former owner points to the fact that the site licence was adhered to and the caravan only occupied seasonally.

The submission details and description of development indicate that the intention of the application is to allow for the re-instatement of a caravan on the site for occupation by the granddaughter of the applicant, her partner and their son to live. It is suggested that any new mobile home would be a wooden style mobile home that is compliant with the caravan act. However the legal definition of a caravan established by Section 29(1) of the Caravan Sites and Control of Development Act 1960 was expanded by Section 13(1) of the The Caravan Sites Act 1968 and is quite complex. It involves 3 tests of size criteria, construction and mobility. No precise details have been submitted of the proposed mobile home to verify whether it would meet the relevant criteria to be lawful caravan.

Furthermore the inference is that the intended occupation of the re-instated mobile home would be full time and permanent and the caravan occupied as primary C3 accommodation. However, as noted above, there is no evidence that any caravan on the site was ever occupied as primary C3 accommodation.

It is further noted that any occupation of any caravan on the site has not taken place for many years. Even the applicant's submission states that "over recent years the site has been abandoned and become overgrown and the site attracted fly tipping" (page 3 of Statement from Owner). A third party letter received during the consultation period of this application indicates that the caravan on the site has not been used for over 27 years. It is understood that the caravan was left on the site and became overgrown and smothered in vegetation and was only unearthed and cleared when the unauthorised tree works took place in 2021. The submitted photographs show an uninhabitable caravan with broken windows and doors and foliage still over it. Notwithstanding the fact that this dilapidated caravan was sited outside the application site, it is also contended that its use for human habitation was abandoned.

Certainly there was no occupation of any caravan on the entire wooded copse area or application site for the 10 year period prior to the submission of this application.

Recently (10/10/22) a third party comment alerted the Council to the fact that a replacement caravan had been placed on the site. Investigations revealed that it is sited in the rear north western corner of the wooded copse, adjacent the rear of the industrial units. This would appear to be a replacement of the old dilapidated caravan shown in the submitted photographs. This newly placed caravan is outside of the current red lined application site and does not currently appear to be occupied. It is therefore subject to separate ongoing Enforcement enquires.

The PPG makes it clear that the applicant is responsible for providing sufficiently precise and unambiguous evidence to support an application for a Lawful Development Certificate but the LPA must co-operate and share evidence allowing the applicant the opportunity to comment. Since the applicants submission does not refer to the 1963 permission at all, nor the Environmental Health Site Licence, these have been shared with the applicant together with the query over the precise siting of the caravan.

Clarification was also sought on the basis of the claim the caravan is lawful. It was specifically asked whether the applicant is claiming the 1963 planning permission remains lawful by virtue of it being correctly implemented and not abandoned? Or whether the claim relates to an historic unlawful use of the site that has, by virtue of time (10 years), become lawful? Further questions were asked about the occupation, when it was last occupied and why did visits to the site cease. However the response received did not provide any further information or evidence.

Since the test of whether a claimed use is lawful rests on the balance of probability, then in this case it is not considered a lawful development certificate can be issued for 'use of the land for the siting of mobile homes and the re-instatement of a mobile home'. There is sufficient doubt and lack of precise and unambiguous evidence about the number of caravans claimed, their siting within the red lined area, their occupation, and potential abandonment, to conclude that the application site has a lawful use for the siting of any caravan(s) or that the site has been used for the siting of caravans for an unbroken period of 10 years immediately preceding the submission of the application. Whilst the 1963 planning permission and site licence are key pieces of evidence that suggests the site *could* have been used for the siting of a single caravan for seasonal holiday occupation in the past, it has not been adequately demonstrated that that permission was ever correctly implemented to remain extant. Furthermore it has not been adequately demonstrated that any re-instated mobile home would meet the definition of a caravan provided by Section 29(1) of the Caravan Sites and Control of Development Act 1960 and Section 13(1) of the The Caravan Sites Act 1968, and, on the balance of probability, its occupation for primary C3 accommodation would not be lawful.

8 Conclusion

It is considered in this case, on the balance of probability, that the use of the application site for the siting of mobile homes and the re-instatement of a mobile home has not been adequately evidenced and a Certificate of Lawfulness cannot therefore be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/22/00541 for the following reasons

FIRST SCHEDULE:

This certificate relates to the following development:

Lawful development certificate for the existing use of the land for the siting of mobile homes and the re-instatement of a mobile home as described in the written particulars, plans and other documents submitted with your application received on 18 May 2022.

SECOND SCHEDULE:

This certificate relates to land at Land opposite Copsewood House, Copse Lane, Hayling Island as shown edged red on the submitted Location Plan received 18 May 2022.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 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 192 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) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.

- (5) 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.

- 1 In the absence of sufficiently precise and unambiguous evidence submitted to support the application, and with reference to other material available to the Council, including the planning history of the site, the Council considers, on the balance of probability, that the red lined application site has not been lawfully used for the siting of mobile homes and the re-instatement of an unspecified mobile home for primary occupation has not been proved to be lawful.

Having regard to these conclusions, a Lawful Development Certificate cannot be issued for the matters the subject of the application.