

- 3.2 The original description has been amended to include the additional wording 'for occupancy only between the 1st of March to 31st October each year'. This was due to the original description of use not being considered to be sufficiently specific about the limitations of the use. In addition, the original description on the form stated that the use was for the 'continued siting of two static caravans' thus referring to the future which is not an appropriate description for an application relating to an existing use made under Section 191, and thus 'continued' has been replaced with 'existing'. The applicant is aware of these amendments.
- 3.3 The application is made under Section 191 of the Town and Country Planning Act 1990 as amended and relates to the lawfulness of an existing use. The applicant claims that the use began more than 10 years before the date of this application.
- 3.4 The application has been made following a request by the applicant to Havant Borough Council to transfer the existing Caravan Site licence at no.139 to their name, following the inheritance of both sites - Nos.137 and 139 in 2019.

4 Statutory Considerations

- 4.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

5 Statutory and Non Statutory Consultations

- 5.1 Not required, however, it is noted that consultations have been carried out on this application but only matters relating to the existing lawfulness of the use can be taken into account under this type of application.

5.2 Natural England

The information provided by your authority do not demonstrate that the requirements of Regulations 75-77 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') covering permitted development rights, have been considered by your authority.

It is Natural England's opinion that the proposals would, in combination with other plans and projects, have adverse effects upon the following European designated sites

- Solent Maritime SAC & Chichester Harbour SPA from increased recreational pressures on designated features such as disturbance and enrichment
- Solent international designated sites through increased nutrients from waste water entering the Solent which causes eutrophication and excessive and smothering algal growth in turn impacts on designated feature

These adverse effects are relevant to the designated sites features and without appropriate mitigation we believe the proposals will have likely significant effects in combination with other plans and projects.

However, the proximity of the proposed residential accommodation is such that suitable mitigation could be secured by the applicant but not as part of a CLU. Section 75-78 of the Habitats Regulations consider the GDO and permitted development, the authority may only approve a development after having ascertained that it will not adversely affect the integrity of the site. In this case Natural England advise that the only way in which suitable avoidance/mitigation can be secured is through a planning application to ensure no likely significant effect on designated sites through contributions and planning conditions

Recent case law ('Sweetman II' people-over-wind judgement) outlines that mitigation measures should not be assessed through a Habitats Regulations Assessment (HRA) to 'screen out' impacts at the stage of considering Likely Significant Effects (LSE) rather avoidance/mitigation measures should be considered through an Appropriate Assessment. Therefore, where impacts are identified as having a LSE, the HRA will need to move on to the Appropriate Assessment stage where avoidance/mitigation measures can be fully assessed. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

5.3 **Southern Water**

Southern Water have no objections to the above proposal.

5.4 **Chichester Harbour Conservancy (Chichester Harbour Area of Outstanding Natural Beauty unit)**

No objection – (no planning condition controls suggested as LDC submission).

6 **Community Involvement**

- 6.1 Not required, however, it is noted that neighbour consultation was carried out.

7 **Legal Considerations**

- 7.1 Section 191(7) provides that, in certain cases, the grant of an LDC is equivalent to a grant of planning permission for obtaining a licence required by licensing regimes enacted in other legislation. Currently these cases are, among other things, an application for:

(1) a caravan site licence under section 3 of the Caravan Sites and Control of Development Act 1960.

- 7.2 Section 191 (1) of the 1990 Act enables anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

- 7.3 By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force.

- 7.4 A breach of planning control becomes “immune” from enforcement action if no action has been taken within certain time-limits. By virtue of section 191 (2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes “lawful” for planning purposes.
- 7.5 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 planning status of land.
- 7.6 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 applicants 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'.

8 Evidence submitted

8.1 (1) Applicant signed covering letter dated 9th September 2020

The applicant states that:

- the plot of land was purchased by their family in 1947 along with the adjacent plot No. 137 Eastoke Avenue.
- although these are designated as separate addresses there is not and never has been a middle division between the two therefore it looks like one plot.
- inherited both sites from late mother Mrs EM Hibbs in 2019 and applied to change the name on the caravan licence for both 137 and 139.
- it was at this time was informed that planning permission could not be located for 139 and to action the change of name should apply for a Lawful Development Certificate.
- caravan licences have been issued for this site since at least 1968 along with site and electrical visits and a change of name was issued as recently as 1992.
- there is a current licence in place.
- supporting correspondence from Environmental Health Department confirming the relevant dates.
- confirm there will be no change of use on the site just the siting of two caravans in the same position that has been the case for over 50 years.

8.2 (2) A copy of letter from Housing Standards Officer for Havant Borough Council) to the applicant dated 21st August 2020 which states the following:

- that the department of Environmental Health at HBC is responsible for the enforcement of the Caravan Sites and Control of Development Act 1960, and that records within the department show that no.139 Eastoke Avenue, Hayling Island has held a caravan licence since 1968 having been transferred to a new owner in 1992.

- that according to the database records held by Environmental Health, officers representing HBC inspected the subject land on 6th December 1999, 21st February 2002, 16th September 2004, 6th October 2008, 22nd July 2009, 6th July 2011.
- that officers of HBC have also seen electrical installation condition reports most recently on 16th February 2007, 5th July 2011 and 23rd August 2015.
- that there is an existing site licence with attached conditions for no.139.
- that before the transfer of the licence that to regularise the planning consent by applying for a Lawful Development Certificate.
- that the existing licence and attached conditions remain in place pending issue of such a certificate.

Note: copies of the caravan Licence No. 113 dated 11th June 1968 and 23rd November 1992 were attached which state, inter alia, that the total number of caravans on the site shall not exceed two at any time. Amongst other conditions on the copy of site licence, condition 7 states that no caravan shall be use on the site for human habitation except between the 1st March and 31st October in any given year.

8.3 (3) A copy of letter from Principal Environmental Health Officer for Havant Borough Council) to the applicant dated 23rd November 1992 which confirms the following:

- The transfer of the caravan site licence number 113 from Miss M.M. Button to Mrs. E.M. Hibbs.
- Copy of site licence 113 dated 11th June 1968 refers to the description of land as No. 139 Eastoke Avenue, Hayling Island and states the number of caravans as 'Two'.

8.4 (4) A copy of location plan and local registrar plan submitted under planning permission ref.25919/2

- This planning permission related to the siting of one caravan at no.137 Eastoke Avenue and is dated 27th March 1979. The site plan shows land to the east of the application area annotated with '139' and the name 'Miss M Button' is readable on the northern strip part of the site. These annotations are visible on Council held records for planning permission ref.25919/2.

8.5 (5) A letter from A.Coker (Mick's Mowing Service) addressed to whom it may concern dated 28th July 2020 stating:

- That he has cut the grass and carried out site maintenance at ref: 139 Eastoke Avenue for at last 5 years and that during that time both static caravans on the site have been occupied.

- 8.6 (6) Email dated 8th January 2021 from applicant confirming:
- That in 1947 No.s 137 & 139 were sold separately and as such always remained as two different address.
 - That the two caravans are used between 1st March and 31st October being a condition of the licences previously issued and the current licence.
 - These caravans are and have in the past only been used by members of the family and that this will be the case in the future.
- 8.7 (7) Email dated 8th January 2021 from applicant enclosing photographs of Register Title No. SH10077 dated 09.10.2019
- This title deed confirms the freehold land edged red in the ownership of the applicant and makes reference to the conveyance of the land in 1947 to M Button (purchaser).
- 8.8 (8) Email dated 11th January 2021 from applicant
- Attached four photographs taken circa 1989 clearly showing two caravans.
- 8.9 (9) Further email dated 11th January 2021 from applicant
- Attached photograph taken 2019 clearly showing three caravans (one on No. 137).
- 8.10 (10) Email dated 13th January 2021 from applicant stating:
- That one caravan is 26 ft by 10 ft and was put on site by Mr Reg Husband who is director of St Hermans Estate Co. Ltd.
 - That the other caravan is 23 ft by 10 ft and has been on site for over 30 years.
- 8.11 (11) Email dated 15th January 2021 from applicant with attached email from Reg Husband – St Hermans estate co. ltd. Technical Director who confirms:
- That the caravans have been in place for at least 30 years.
 - Middle unit is a calypso 25 x 10 1969 replacing an old bluebird in November 2000.
 - Right hand side is a 1993 Willerby 30 x 10 supplied new in lieu of a previous old unit.
- 8.12 (12) Photo of land registry plan for No. 139 Eastoke Avenue provided to case officer on 29th January 2021 from applicant
- 8.13 (13) 2 x Waste Services Invoices from Business Stream (A Scottish water company)
- For the address 139 Eastoke Avenue for periods between 1 April 2017 – 31 March 2019

8.14 (14) 3 x Southern Electric Bills

- For the address Caravan at No. 139 Eastoke Avenue for periods between 25th December 2018 to 13th September 2019 and a letter from Southern Electric to Executors of Mrs E Hibbs dated 28th March 2019.

Further evidence submitted

8.15 Following advice from HBC & EHDC legal services and advice given to the applicant, the applicant has now employed a planning agent to assist in the application and further evidence in support of the application has been submitted.

8.16 (15) Email from agent dated 8th January 2021 enclosing:

- An accurate site and location plan A101 has been submitted clearly showing the extent of the application site and the siting of the two caravans, the subject of this application.

8.17 (16) Signed letter from Stephen Chesters of 20 Chalfont Road, Rickmansworth, Hertfordshire, WO3 9TB stating:

- That the land (139 Eastoke Avenue) was purchased by his great aunt Miss Mabel May Button on 6th February 1947 and remains in the family at the present time. He further states that the current owner is his mother Mrs Janice Elizabeth Chesters who inherited the land and the two static caravans presently in place in 2019 from her mother. The letter continues that he has regularly used the caravans and associated land shown on the plan ref: A101 for weekend, Bank Holidays, family holidays and day trips for over 20 years. In addition, that for at least the last 10 years he has visited on several occasions a month, his most recent visit at the time of writing being the May Bank Holiday on 01.05.2021 and so confirms the caravans are still currently in use.

8.18 (17) Signed letter dated 10.05.21 by Mr Graeme Chesters of 3 Mulberry Close, Park Street, St Albans, Hertfordshire, AL2 2AW stating:

- That the mentioned land was purchase by his great aunt Miss Mabel May Button on 6th February 1947 and has remained in the family to the present day. Further that the current owner is his mother Mrs Janice Elizabeth Chesters who inherited the land and the 2 static caravans currently on site from her mother in 2019. The letter continues that he has regularly used the caravans and associated land shown on the plan ref: A101 for weekend breaks, family holidays, Bank Holidays, and day trips. In addition, that for at least the last 10 years he has used the caravans on several occasions a month, his most recent visit at the time of writing being the May Bank Holiday on 01.05.2021 and so confirms the caravans are still currently in use.

8.19 (18) Signed letter by Mr Reg Husband, Technical Director, St Hermans Estate C Ltd St Hermans Estate Co Ltd, Lower Tye Farm, Copse Lane, Hayling Island, PO11 0RQ stating:

- That he has known the family who own the above mentioned land for approximately 30 years and confirms that 2 static caravans have been in place for all that period of time and have been regularly used. In addition, that in November 2000 he replaced one of the original caravans with a newer unit. He further states that since he has known the family they have regularly used the caravans and associated land shown on plan Ref: A101 for weekend breaks, holidays, Bank Holidays and day trips. He further states that the current owner Mrs Janice Chesters has 2 sons, the eldest Stephen has a young family of his own, and during at least the last 10 years between them and the family have attended the site several times a month. He most recently met Mrs Chesters on 10th May 2021 so is happy to confirm the current use of the caravans.

8.20 (19) Agent email received 24/01/2022 enclosing:

- Three google earth historic images of the site in 2019, 2007 and 1999 all showing the 2 caravans in situ (and 1 at No.137) in the same position and managed grass area associated with the caravans.

9 LPA evidence

9.1 As noted above, whilst the applicant is responsible for providing sufficient information to support an application in relation to an LDC the lpa also has some records/information relating to this site and the current use for the siting of 2 caravans and associated land.

9.2 (20) On case file

- Google earth imagery dated 31/12/1999, 31/12/2001, 21/04/2007, 19/10/2011, 22/04/2015 & 14/09/2019 all showing the 2 caravans (and 1 on No. 137) on the site in the same position and a well kept associated grassed area.

9.3 (21) Email from HBC Environmental Health Officer comprising:

- Caravan licence No.113 dated 11 June 1968 for the siting of two caravans and transfer of licence in 1992.
- Inspection notes on database as follows:

GG/21/02/02

Insp **16/09/03** E/C not seen. exp **05/03**. E/C seen Exp **16/02/07**

Insp **6/10/08** OK New EC seen EXp **05/06/11**

Insp **22/07/09** OK

Insp **06/07/11** no FP EC exp

EC EXP 23/08/15

For avoidance of doubt Insp = Inspection; EC = electrical certificate; Exp = Expired; FP = Fire point.

- That on 24th July 2019 were informed that the previous owner had deceased, and a transfer application process began.

9.4 (22) Email from EHDC Geographic Information Systems Officer on 26/01/2022 enclosing:

- Aerial photograph that came from a file marked as a 2002 flight of Chichester Harbour showing 2 caravans in place and well kept grassed area.

9.5 (23) HBC GIS

- Aerial base map on HBC GIS dated 2013 clearly shows the caravans in situ and a well kept grass area.

10 Other matters

- 10.1 As noted above, Natural England (NE) have advised that Section 75-78 of the Habitats Regulations consider the GDO and permitted development and that the authority may only approve a development after having ascertained that it will not adversely affect the integrity of the site.
- 10.2 The current application is made under section 191 of the Act and seeks a Lawful Development Certificate for an existing use for the use of land for the siting of two caravans for the purposes of human habitation between 1st March and 31st October each year. As such, the use pre dates 'The Conservation of Habitats and Species Regulations 2017' which came into force on 30th November 2017 and therefore the Regulations cannot be applied in this instance and mitigation cannot be sought for the current use.

11 Legal & Democratic Services

- 11.1 The supporting information provided by the applicant including plans and photographs, statements from family members and tradesmen, correspondence with environmental services as to the licence history is (in itself) sufficient to make their version of events more than probable. The authority has no evidence itself, nor from others, to contradict the applicant's version of events. Therefore, the grant of a certificate can be justified on the balance of probability.
- 11.2 I agree that The Conservation of Habitats and Species Regulations 2017 cannot be applied retrospectively given the CLEUD pre-dates it's commencement.

12 Conclusion

- 12.1 The evidence provided by the applicant in support of the application and the Council's own records, is sufficient to justify the grant of a Lawful Development Certificate for an Existing Use for the use of land for the siting of two caravans for the purposes of human habitation between 1st March and 31st October each year on the balance of probability.
- 12.2 Therefore, a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990.

13 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/20/00819

Havant Borough Council, as Local Planning Authority, certifies that on 9th September 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 plan attached to this certificate 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 use described in the First and Second Schedules and plan attached to this Certificate, have taken place for a continuous period of at least 10 years up to the date of the current application.

The Authority has considered evidence and additional information submitted by the applicant and the Council's own records.

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Lawful Development Certificate for an Existing Use for the use of land for the siting of two caravans for the purposes of human habitation between 1st March and 31st October each year as described in the written particulars, plans and other documents submitted with your application received on 10 September 2020.

SECOND SCHEDULE:

This certificate relates to land at 139 Eastoke Avenue, Hayling Island as shown edged red on the submitted Location Plan received 10 September 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.