

## REPORT SUMMARY

<b>REFERENCE NO - 19/02642/LDCEX</b>		
<b>APPLICATION PROPOSAL</b> Lawful Development Certificate (Existing) - the permanent siting and use of three touring caravans (together with surrounding land used in association with them) as three separate residential units		
<b>ADDRESS</b> Manor Court Farm Ashurst Road Ashurst Royal Tunbridge Wells Kent TN3 9TB		
<b>RECOMMENDATION</b> to GRANT a Certificate of Lawful Existing Use or Development (please refer to section 11.0 of the report for full recommendation)		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> <ul style="list-style-type: none"> <li>• The evidence submitted with the application is in the form of sworn affidavits which are afforded considerable weight.</li> <li>• The Council's evidence from aerial photos corroborates the submitted evidence. The Council has no other evidence to contradict or disprove the submitted evidence.</li> <li>• Weighing up all the submitted evidence it is considered that on the balance of probability the claimed use of the land has been taking place continuously for more than 10 years before the application date. Therefore this use of the land is considered immune from enforcement action.</li> <li>• As such, it is considered that this application for a Certificate of Lawful Existing Use should be granted.</li> </ul>		
<b>INFORMATION ABOUT FINANCIAL BENEFITS OF PROPOSAL</b> The following are considered to be material to the application: <b>Contributions (to be secured through Section 106 legal agreement/unilateral undertaking):</b> N/A <b>Net increase in numbers of jobs:</b> N/A <b>Estimated average annual workplace salary spend in Borough through net increase in numbers of jobs:</b> N/A The following are not considered to be material to the application: <b>Estimated annual council tax benefit for Borough:</b> N/A <b>Estimated annual council tax benefit total:</b> N/A <b>Annual New Homes Bonus (for first 4 years):</b> N/A <b>Estimated annual business rates benefits for Borough:</b> N/A		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The applicant is a Borough Councillor		
<b>WARD</b> Speldhurst & Bidborough	<b>PARISH/TOWN COUNCIL</b> Speldhurst Parish Council	<b>APPLICANT</b> Mrs Julia Soyke <b>AGENT</b> Mr Mark Henty
<b>DECISION DUE DATE</b> 13/11/19	<b>PUBLICITY EXPIRY DATE</b> 24/10/19	<b>OFFICER SITE VISIT DATE</b> 03/10/19
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		

03/02657/FUL	Proposal: Change of use to storage and retail outlet for tableware and gifts; Proposed opening times 10am-4pm Mondays to Saturdays; Insertion of window on west elevation to match other buildings on same property	Refused	18/03/04
02/01745/FUL	Change of use of farm outbuilding from business use to retail	Granted	23/10/02
01/00557/FUL	Change of use of stable to light industrial use	Granted	30/10/01
01/02633/FUL	Conversion of existing farm outbuilding to light industrial/office use (Class B)	Granted	18/02/02
00/01061/FUL	Change of use of old dairy and storage area to refurbishment and distribution of small machinery and storage	Granted	04/09/00
00/00824/FUL	Conversion of existing farm outbuildings to provide two units for light industrial incorporating storage, let on a short term basis and a toilet unit for the two units and holiday campers that already use the site	Granted	04/09/00
99/01686/FUL	Change of use of old dairy and storage area to carpentry workshop and storage area	Granted	14/12/99
98/00265/FUL	Change of use of agricultural building to use for carpentry (picture framing) workshop	Granted	11/05/98
89/01035/FUL	Use of barn for storage of horticultural equipment & sale products to members	Granted	17/07/89

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

1.01 This application relates to a farm holding on the southern side of Ashurst Road (from which access is taken), within the small settlement of Stone Cross which lies to the east of Ashurst itself. The site is a historic farmstead which comprises a number of historic and modern farm buildings. This includes a Grade II listed farmhouse and barn.

### 2.0 PROPOSAL

2.01 This application seeks a Certificate of Lawful Existing Use or Development (CLEUD) for the permanent siting and use of three touring caravans (together with surrounding land used in association with them) as three separate residential units.

2.02 The caravans in question are sited in two separate areas. No. 1 is to the SE end of the farm complex, behind a barn used for caravan storage. Nos 2 & 3 are located in a small fenced paddock to the SW side of the access road. All three are touring caravans, as opposed to static mobile homes. The application includes a site plan showing their locations along with four sworn affidavits relating to the use of the land.

2.03 It is argued that the residential occupation of the three caravans, plus the ancillary use of the land around them has been taking place for over 10 years before the date of this application and therefore the unauthorised use is now immune from enforcement action.

### 3.0 SUMMARY INFORMATION

	Proposed
Land use(s) including floor area(s)	3 No. residential caravans
No. of residential units	3

### 4.0 PLANNING CONSTRAINTS

4.01 Not applicable as this is an application for a CLEUD

### 5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework 2019 (NPPF)  
National Planning Practice Guidance (NPPG)  
Town and Country Planning Act 1990 (as amended)

### 6.0 LOCAL REPRESENTATIONS

6.01 A site notice was displayed at the entrance on 3 October 2019. No response has been received.

### 7.0 CONSULTATIONS

7.01 Not applicable as this is an application for a CLEUD.

### 8.0 APPLICANT'S SUPPORTING COMMENTS

8.01 It is evident from the evidence submitted, that the touring caravans have been permanently sited within the farmyard and used for residential purposes for in excess of ten years. We therefore trust that the submitted evidence is sufficient to enable the Local Authority to determine that on the balance of probability, this has been the case for in excess of ten years and it is appropriate that a Lawful Development Certificate is granted.

### 9.0 BACKGROUND PAPERS AND PLANS

9.01 Application form  
Site location plan  
Cover letter dated 04/09/19  
Statutory declarations x 4

### 10.0 APPRAISAL

10.01 This application seeks a Certificate of Lawful Existing Use or Development (CLEUD) for the permanent siting and use of three touring caravans, together with land within their curtilage, as three separate residential units. CLEUD applications are determined on whether the evidence proves, on the balance of probability, that the claimed uses have been taking place continuously over the ten years prior to the application date. NPPF and Local Plan policies are not determinative in this case, except where there is guidance specifically relating to enforcement matters and the handling of CLEUD applications.

Caravan Sites Act 1960 (The Sites Act) and S.55

10.02 The Sites Act sets out the definition of a caravan, which (in respect of size) was amended in 2006. These are, in summary;

- That it is designed or adapted for human habitation;
- Capable of being towed or transported from one place to another;
- Composed of not more than two sections separately constructed and designed to be assembled on site;
- is, when assembled, physically capable of being moved (i.e. towed or transported) by road from one place to another (this excludes any consideration as to whether it can be lawfully moved on a highway);
- Falls within maximum dimensions of 20m length, 6.8m width and 3.05m internal height.

10.03 The application structures are clearly intended to be designed or adapted for human habitation, being simple touring caravans that can be towed behind a domestic vehicle.

10.04 It is therefore concluded that the structure subject to the application is a caravan and not a building operation. S55 (1) of the Act states that 'development' means;

*'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'.*

10.05 A simple 'change of use' does not require planning permission: it is only a material change which counts as 'development' requiring planning permission under S55(1). The development comprises a 'material change of use of the land' as the site is now used for the stationing of three caravans for residential purposes. As a matter of fact and degree, the use is substantially different in character and kind and therefore is 'material'.

10.06 This use was not granted planning permission. Section 171B(3)) states that in the case of any breach of planning control other than;

- the change of use of any building to use as a single dwellinghouse;
- building, engineering, mining or other operations, or relevant demolition works;

No enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The following paragraphs assess whether that ten year period has elapsed and if the breach of planning control is immune from enforcement proceedings.

#### Assessment of evidence

10.07 The PPG states that the applicant is responsible for providing sufficient information to support an application, although the LPA needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. The case officer is not aware of any such enquiries.

10.08 In the case of applications for existing use, if a LPA 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.

10.09 In considering this application the Council must do so against the evidence submitted by the applicant and also its own evidence.

*Applicant's evidence*

10.10 This is in the form of four affidavits submitted by the applicant.

Statutory declaration by Julia Soyke

10.11 This sets out that:

- Manor Court Farm was originally run as an arable, dairy and pig farm, however the latter two elements were wound up many years ago as they were unviable;
- The farm has diversified over the last thirty years, one of those enterprises being the income received from the three caravans;
- All three plots have been used for the claimed residential purposes for in excess of ten years; the most recent addition was No. 3 in January 2008;
- This is borne out by Google Maps photography from January 2008 onwards;
- To her certain knowledge all three caravans have been on site continuously and in permanent residential use since March 2008.

Statutory declaration of Dean Wills

10.12 This sets out that:

- Mr D Wills moved to Manor Court Farm around June 2010 and permanently resided in Caravan No. 3 since October 2012;
- His sister Keri Watson (nee Wills) resided in Caravan No. 3 before him between March 2008 and October 2012;
- His father Steve Wills has resided in Caravan No. 2 since around December 2007;
- To his certain knowledge all three caravans have been on site continuously and in permanent residential use since March 2008.

Statutory declaration of Steve Wills

10.13 This sets out that:

- Mr S Wills moved to Manor Court Farm around 2005 and permanently resided in Caravan No. 2 since December 2007;
- He has utilised land immediately around it for residential purposes;
- Since he has resided there, Darren Scott has permanently resided in Caravan No.1;
- Furthermore, his daughter Keri Watson (nee Wills) resided in Caravan No. 3 between March 2008 and October 2012 and his son Dean Wills occupied it permanently thereafter;
- To his certain knowledge all three caravans have been on site continuously and in permanent residential use since March 2008.

Statutory declaration of Darren Scott

10.14 This sets out that:

- Mr Scott moved to Manor Court Farm around 1997 and permanently resided in Caravan No. 1 since then;
- He has utilised land immediately around it for residential purposes;
- Steve Wills has resided in Caravan No. 2 since around December 2007;
- Keri Watson (nee Wills) resided in Caravan No. 3 between March 2008 and October 2012 and Dean Wills occupied it permanently thereafter;

- To his certain knowledge all three caravans have been on site continuously and in permanent residential use since March 2008.

#### TWBC evidence

- 10.15 The Council's aerial photography corroborates the affidavits in that since the 2006 images the site is shown as being used to park caravans and vehicles in the areas shown on the site location plan. There are no corresponding Business Rates or Council Tax records, however the use would not be liable for Business Rates. Touring caravans are often not made liable for Council Tax by the Valuation Office Agency. There is no reference to the caravans on the previous applications here however the planning history above pre-dates the ten-year period for which this CLEUD is sought.

#### Provisions of Localism Act

- 10.16 Section 124 of the Localism Act 2012 inserted subsection 3(A) into section 191 of the 1990 Act in the following terms:

*“3(A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if –*

- (a) the time for applying for an order under section 171BA(a) (a “planning enforcement order”) in relation to the matter has not expired,*
- (b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided or has been withdrawn, or*
- (c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun (has not expired).”*

- 10.17 The LPA has discretion as to whether they wish to refuse the CLEUD if the breach has been discovered within the previous 12 months. The effect of this provision is to prevent an application for a CLEUD from succeeding in reliance upon the time limits in section 171B (ten years in the case of this development, which first came to the awareness of the LPA when the application was submitted in September 2019). The LPA can refuse the CLEUD application based on the above provisions. This would normally be done where the matter is currently under consideration by the LPA in relation to an application for a planning enforcement order, where a breach has been concealed.

- 10.18 Consideration has been given as to whether this breach has been ‘concealed’. There appear to have been no overt attempts to actively hide the development from the LPA. On balance, it is not considered appropriate to refuse the application under the Localism Act legislation.

#### Conclusions

- 10.19 Based on the submitted evidence, the unlawful use appears to be immune. The evidence submitted with the application is in the form of sworn affidavits which are afforded considerable weight. The Council's evidence from aerial photos corroborates the submitted evidence. The Council has no other evidence to contradict or disprove the submitted evidence. The absence of Business Rates and Council Tax corroboration is not considered to substantially weigh against the submission.

10.20 Weighing up all the submitted evidence it is considered that on the balance of probability the claimed use of the land has been taking place continuously for more than 10 years before the application date. Therefore this use of the land is considered immune from enforcement action. As such, it is considered that this application for a Certificate of Lawful Existing Use or Development should be granted.

**11.0 RECOMMENDATION** – GRANT a Certificate of Lawful Existing Use or Development for the following reason:

- 1) The Local Planning Authority is satisfied that, on the balance of probability, the use of land for the stationing of three caravans, together with ancillary residential areas and access thereto shown on the submitted site location plan has been taking place continuously for more than 10 years before the application date.

### **INFORMATIVES**

(1) The plans taken into consideration in reaching the decision are:

Application form  
Site location plan  
Cover letter dated 04/09/19  
Statutory declarations x 4

Case Officer: Richard Hazelgrove

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.