



PARTNERS IN PLANNING

Planning Statement

Section 192 LDC Application: Use of Land for Siting 19
additional caravans.

Harvey's Nurseries, Peppard Road, Caversham, Reading, RG4
8TW

Planning Statement

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LPL Project No: 1642

Date: 01/04/2025

Version: fv

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1. Introduction

- 1.1. Laister Planning Limited (Laister) has been instructed by the Applicant to submit an application under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) for 'Use of land for the stationing of 115 caravans', on land forming part of Harvey's Nurseries Caravan Park.
- 1.2. The application seeks to establish the lawful principle of siting 115 static caravans for permanent residential occupation on land at Harvey's Nurseries without the need to obtain planning permission. The land within which it is envisaged the additional units would be sited has been used as a caravan park in line with planning permission **81/TP/334**, granted on 18 September 1981 for:

"The continued use of land as a mobile home park and its occupation by no more than 96 homes, continued use of land and buildings for the sale and maintenance of mobile homes, continued use of the improved access road to Peppard Road".
- 1.3. The proposed use would therefore add an additional 19 units.
- 1.4. Section 2 of this Planning Statement considers the definitions and guidance in relation to S192 applications, caravan sites, caravans, and the interrelationship between planning and licensing for caravan sites. Section 3 describes the site context and relevant planning history. Section 4 contains the applicant's full assessment and considers whether the proposal amounts to a material change of use, particularly a change in the character of the use itself, in the context of relevant case law. Our overall conclusions are summarised in Section 5.
- 1.5. The Local Planning Authority (LPA) for this site is Reading Borough Council (RBC).

The Proposal

- 1.6. The application seeks to establish the lawful principle of stationing (or siting) of 115 static caravans for residential purposes within the site, a 20% increase from the current 96. The location of the existing or proposed caravans are undefined in these proposals and could be stationed anywhere within the site (subject, of course, to site licensing/model standards). The size of the caravan is also not defined but will fall within the statutory definition of 'caravan' as referred to in the following section of this report. It could comprise a single or twin unit, although that is not material as caravan sites (as statutorily defined) are a use of land, and the replacement of a caravan with a new smaller or larger unit is not 'development'.
- 1.7. For the avoidance of doubt, the proposals do not include any operational development that may be required to support the caravan site use, such as those required by conditions of a caravan site licence issued under the Caravan Sites and Control of Development Act 1960 (the 1960 Act). Such operational development is normally permitted development under Town and Country Planning (General Permitted Development) Order 2015 (GPDO, as amended), Schedule 2, Part 5, Class B. The question of this application is strictly confined to the use of land for stationing of the proposed caravans and nothing more. References to operational development would therefore fall outside of the proposal and are not considered further.



2. Legal Definitions and Guidance

Purpose of an Application under Section 192 of the Planning Act

- 2.1. Planning Practice Guidance (PPG) on LDCs explains the process for obtaining a CLOPUD. The PPG advises that an LPA can grant a certificate confirming that a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under TCPA S192.
- 2.2. The guidance advises:

“Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun”.
- 2.3. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.”
- 2.4. The PPG advises (Paragraph: 003 Reference ID: 17c-003-20140306) that:

“An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.”
- 2.5. The PPG goes on to advise,

“In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved”. ‘A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. ‘In determining an application for a prospective development under section 192 a local planning authority needs to ask, “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

Definition of a 'Caravan Site' and 'Caravan'

- 2.6. The House of Lords decision in 'Wyre Forest 1990' [Wyre Forest District Council and SoS and Other, 1990 [2 A.C. 357], dealt with a permission for the use of land as a caravan site in which the council objected. The case considered the definition of a 'caravan site' and a 'caravan' and examined a case of whether a chalet was a 'caravan'.
- 2.7. Bridge L.J. states at Page 368, Part F:

“My Lords, I have to say that none of the foregoing observations dissuade me from the view that the terms ‘caravan’ and ‘caravan site’, when used at any time since D-Day [being the commencement of the Caravan Sites and Control of Development Act 1960, which defined both terms in statute] in any formal document under the Planning Acts, prima facie have the meaning which they are given by the Act of 1960 as amended.”
- 2.8. The case was allowed with the Council paying the appellant's costs. Therefore, the definition of a 'caravan site' and a 'caravan' are as set out in the Caravan Sites and Control of Development Act 1960 (the 1960 Act).

Caravan Site

- 2.9. Section 1(4) of the 1960 Act provides the definition of a 'caravan site' as follows:

“the expression “caravan site” means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.”
- 2.10. Planning control adopts the same definition arising from the 1960 Act, as set out in Section 336 (Interpretation) of the Town and Country Planning Act 1990 (the '1990 Act', as amended). Section 336 of the 1990 Act states:



“In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section and to any transitional provision made by the Planning (Consequential Provisions) Act 1990, ‘caravan site’ has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960.”

- 2.11. A ‘caravan site’ is statutorily defined in both planning and licensing terms. There are elements of caravan site which are used for the stationing of caravans, and areas which are used for ancillary purposes such as the roadways, private garden areas, service areas, car parking, open space and recreation areas, storage, caravan sales, etc.

Caravan

- 2.12. Section 29 of the 1960 Act provides the definition of a ‘caravan’ as follows:

“‘caravan’ means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—

(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or

(b) any tent;”

- 2.13. The definition of a ‘caravan’ in section 29 above was amended by section 13 of the Caravan Sites Act 1968 (the 1968 Act) to cover ‘Twin-unit caravans’. Section 13 of the 1968 Act was amended by ‘The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006’. The definition of a ‘caravan’ is now therefore as follows:

“(1) A structure designed or adapted for human habitation which—

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),

shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the M1 Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

(2) For the purposes of Part I of the Caravan Sites and Control of Development Act 1960, the expression “caravan” shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the foregoing subsection if its dimensions when assembled exceed any of the following limits, namely—

(a) length (exclusive of any drawbar): 65.616 feet (20 metres);

(b) width: 22.309 feet (6.8 metres);

(c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10.006 feet (3.05 metres).”

- 2.14. For planning purposes, both the 1990 Act and The Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the ‘GPDO’) each adopt this singular definition of a caravan.
- 2.15. The definition within the 1960 Act includes all types of caravans as being the same and interchangeable, including touring caravans, static caravans and park homes.
- 2.16. Therefore, a planning permission for the siting of caravans is a use of land, and not in itself operational development. Unless restricted or controlled by condition, caravans can normally be sited anywhere within an area covered by a planning permission. The layout of a site, the caravan types that can be sited there, and the maximum numbers of caravans that can be sited can only be restricted by condition as they are normally permitted development as required by the site licence.

Interrelationship between Planning and Licensing for Caravan



Sites

- 2.17. A dual control system exists between the 1990 Planning Act and the 1960 Caravan Act. The conventional differentiation applied is that planning permissions should be issued mainly on the basis of the principle of the use of the land as a caravan site and its external effects, and that site licences should be concerned with internal arrangements of the caravan site which affect only the users of the site and are primarily concerned with health and safety.
- 2.18. The licensing process, using model standards, would normally dictate the precise layout and spacing of individual caravans; the requirement for infrastructure (including drainage and sanitation), ancillary development; and other features of the caravan site.
- 2.19. Schedule 2, Part 5 of the GPDO (1995) covers permitted development at caravan sites and recreational campsites. Class B states that the following is permitted development: ***“Development required by the conditions of a site licence for the time being in force under the 1960 Act”***.
- 2.20. Under normal circumstances, the roads, paths, hardstandings and other necessary infrastructure (including the laying out of recreational space) are covered by the site licence and would be permitted development should the site licencing require such features. Planning considerations should therefore only relate to the use of the land for the intended purpose (in this case, being the siting of caravans), and not make any assessment of any operational development that would accompany the development.

Requirements for a Site Licence

- 2.21. The 1960 Act set outs in Section 1 that there is a prohibition of the use of land as a caravan site without a site licence. Operating a site without a licence makes the owner liable to an offence and a summary conviction.
- 2.22. Section 3 relates to applications for a site licence. Section 3(3) is most pertinent for planning purposes. It states:
“A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order”.
- 2.23. It is clear that a caravan site licence could only be issued where the Authority is already satisfied that ‘the land’ or ‘caravan site’ benefits from planning permission. The licensing authority would confirm the planning status of the area to be licenced before the issuance of the licence.



3. Application Site Context and Planning History

Site Context

- 3.1. The application site comprises a mobile home park containing 96 mobile homes and its access, as outlined in red on the illustrative Google Earth extract provided at Figure 3.1 below.



Figure 3.1: The application site and access edged in red.

- 3.2. The site is located in Caversham to the northeast of Reading city centre and is accessed off Peppard Road. Peppard Road is characterised by large detached, two storey residential properties, with The Hill Primary School lying to the northwest of the park, and residential cul-de-sacs further south-eastward. Reading Crematorium and an allotment site lie to the south west and south of the site, and a densely wooded area borders the northern boundary. The district centre of Caversham lies approximately 600m to the north. The site comprises part of the Caversham Park Estate (a Registered Park and Garden, ref. 1000524) and lies within a former walled garden. Caversham Park is listed as of being of architectural or historic importance, as are the walls of the former garden (ref. 1302854). Both are Grade II listed.
- 3.3. The site is entirely within Flood Zone 1, meaning it is at the lowest risk of flooding and is not subject to any landscape designation or other significant constraints on the site, such as SSSI, SAC or SPA.

Planning History

- 3.4. The site used to be under the jurisdiction of South Oxfordshire Council and Henley Town Council, before transferring to Reading Borough Council (RBC). At that time, it appears that not all older planning history records were transferred successfully and some can no longer be recovered.
- 3.5. We contacted RBC and paid the requisite fee for a register of all planning history associated with the site and for any historic documents they may hold. These were provided on 20/03/25 with confirmation that all surviving planning history documents were now available. We attach the register of history at Appendix 13 and set out each permission chronologically below.

H12/0051

- 3.6. The first historic record is a planning permission dated 22 February 1951 (H12/0051) for '*Site for Caravan*'.
- 3.7. We have recovered the decision notice for this permission which lists three conditions, one of which limited the permission to a temporary period of one year.

H34/52

- 3.8. Then, permission reference H34/52 was granted on 8 April 1952, granting permission for '*Retention of caravan site*', conditionally restricted to up to 46 caravans and to a temporary period of 5 years. We have been able to obtain the decision notice but not the location plan to identify the land to which the permission relates.

H76/52

- 3.9. Permission was then granted on 23 April 1952 (H76/52) for '*Advance site for caravans*'.
- 3.10. No documents have been recovered for this permission.

H167/53

- 3.11. Permission was granted on 29 June 1952 (H167/53) for '*Site for 3 caravans*'.
- 3.12. No documents have been recovered for this permission.

H189/57D

- 3.13. Permission was granted on 6 May 1957 (H189/57D) for '*Retention of Caravan Site*'.
- 3.14. No documents have been recovered for this permission.

H540/58

- 3.15. Permission was granted on 30 September 1958 (H540/58) for '*Site for Caravan*'.
- 3.16. No documents have been recovered for this permission.

H583/60D

- 3.17. An 'unconditional consent' was granted on 21 September 1960 for simply '*Peppard Road Caravans*'.
- 3.18. No documents have been recovered for this permission.

H927/60

- 3.19. Permission was granted on 16 September 1961 under reference (H927/60) for '*Site for 77 caravans*', but no further details have been found to enable us to identify if the permission was temporary or to which area of the site it related.

H555/61D

- 3.20. Permission was granted on 29 September 1961 (H927/61D) for '*Site for 80 Caravans*'. This was limited to a 15 year temporary period.
- 3.21. No documents have been recovered for this permission.

H279/67

- 3.22. A further temporary permission was granted on 22 March 1967 (ref H279/67) for '*28 caravans*'.
- 3.23. We were able to obtain the decision notice for this permission but no location plan. One of the conditions



required the caravans to be removed on the expiry date of the 1961 permission (30 September 1976).

81/TP/0334

- 3.24. There was then a permission in September 1981 which became the operative permission for the entire site, and is hereinafter called '**the 1981 permission**'. We requested a copy of all documents associated with this permission from RBC. The Technical Support Team confirmed to us by email on 13/09/2024 that they were unable to obtain any documents relating to permission 81/TP/334. We are, however, able to piece together the main facts with reference to information we have recovered on a 1998 permission (which we cover below).
- 3.25. According to the officer's report into the 1998 permission, planning permission ref. 81/TP/334 had previously been granted over the land on 18 September 1981 for "*The continued use of land as a mobile home park and its occupation by no more than 96 homes, continued use of land and buildings for the sale and maintenance of mobile homes, continued use of the improved access road to Peppard Road*".
- 3.26. This would appear to be the main operative planning permission for the use of the site as a mobile home park, albeit the permission was subsequently replaced. Although we do not have a boundary for this permission, we do have the boundary of the 1998 permission (Section 73), where the red line must match the parent permission. The boundary for the 1981 permission is therefore the entire site, as shown under the 1998 permission below.

96/00986/VC (PL/96/0714)

- 3.27. The planning register provided identifies a later planning permission ref. 96/00986/VC, granted on 27 March 1998. The alternative reference for this record is PL/96/0714. This permission is hereinafter referred to as '**the 1998 permission**'
- 3.28. This permission was a variation of condition application, granted for "*Section 73 application to continue use of mobile home park without compliance with condition 2(ii) of planning consent 81/TP/334 which states no extension/addition to a mobile home shall be situated less than 3 m from any highway or site road used by vehicular traffic*". The accompanying location plan (Figure 3.2 below) captures the whole of the Harvey's Nurseries site and its access within the permission boundary (thick black line).

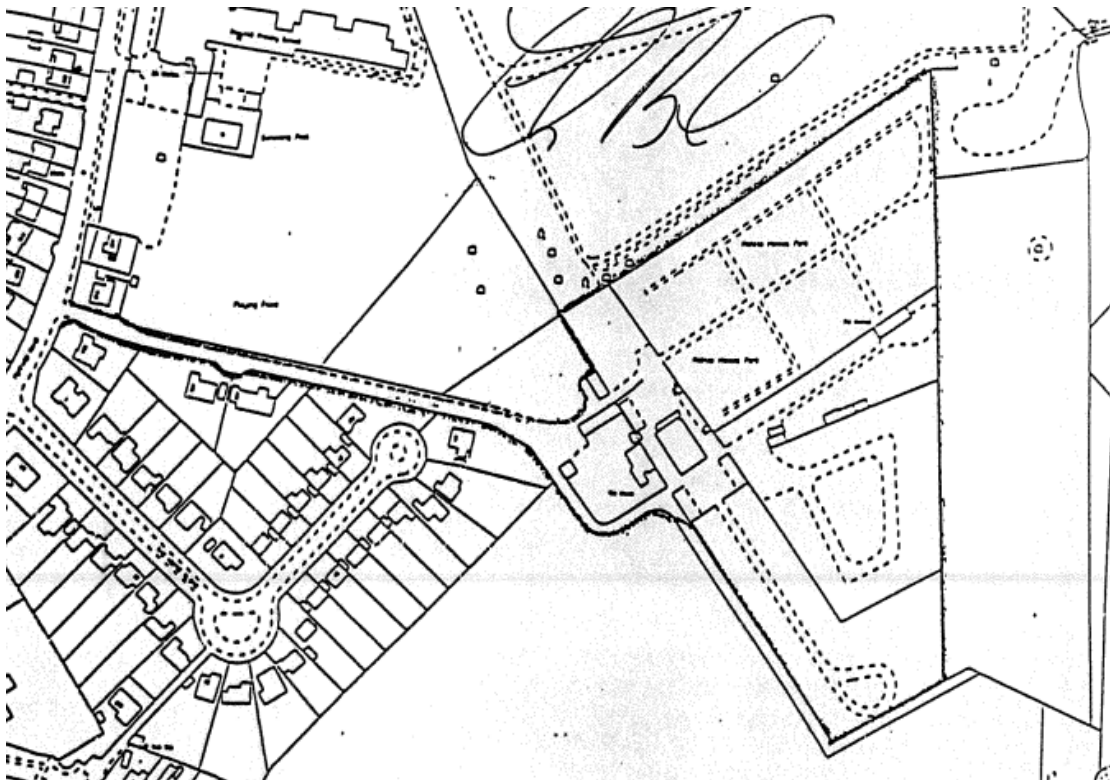


Figure 3.2: PL/96/0714 Location Plan

- 3.29. We were furnished with all available documents relating to the 1998 permission, which included: 1998 permission decision notice; 1998 permission site location plan; the committee report for the 1998 permission; a S52 agreement associated with the 1981 permission (dated 18 September 1981); and a deed of variation of the S52 agreement (dated 27 March 1998). These are all contained at **Appendix 1** of this statement.
- 3.30. In the absence of any further documentation, it appears that the operative permission for the Harvey's Nurseries site is 81/TP/334 as varied by PL/96/0714, but that there are no surviving documents for the 1981 permission.
- 3.31. Consequently, the only planning condition that remains imposed on the site from the 1981 permission, is that which is described in the 1998 permission (*Condition 2(ii)*).
- 3.32. The section 52 agreement (S52) associated with the 1981 permission also set out other restrictions (extract provided at Figure 3.3 below), requiring that spacing between existing mobile homes was no less than 5m, any new mobile homes should be spaced at no less than 6m, that no mobile home to be less than 3m from a road, and no outbuildings in the 5m separation gap.

- (i) Within a period of five years from the date of this Agreement all mobile homes on the Site will be so situated as to ensure that a minimum distance of 5 metres is maintained between each mobile home in accordance with Plan No.C1004/1 attached hereto
- (ii) From the date of this Agreement the siting of any new mobile home on the Site or the siting of any new mobile home on any extension to the Site will be subject to the following conditions:-
- (a) No mobile home will be situated less than six metres away from any other mobile home
- (b) No mobile home shall be situated less than three metres away from any highway or site road used by vehicular traffic
- (c) No outbuildings will be erected within the curtilage of a mobile home which will reduce the distance between that outbuilding and any other mobile home to less than 5 metres

Figure 3.3: 1981 s52 agreement extract

- 3.33. The plan, No.C1004/1, was not provided to us by RBC.
- 3.34. The 1998 permission then varied condition 2(ii) of 81/TP334, the decision notice granting permission for:
- " READING BOROUGH COUNCIL as Local Planning Authority hereby varies Condition No 2(ii) of planning permission 81/TP/334 granted on 14 October 1989 for: continued use of land as mobile home park."*
- 3.35. One condition accompanied the permission, which read:
- "No extension/addition to a mobile home shall be situated less than 2 metres from any highway or site road used by vehicular traffic."*
- 3.36. The deed of variation legal agreement which accompanied this permission, amended the minimum distance from a road to 2m in Condition 2 (ii)(b), to align with model standards.
- 3.37. As such, because permission 81/TP/334 no longer exists in the Council's files, and we are unable to verify what

conditions were imposed on it other than Condition 2(ii), the site benefits from planning permission for *"The continued use of land as a mobile home park and its occupation by no more than 96 homes, continued use of land and buildings for the sale and maintenance of mobile homes, continued use of the improved access road to Peppard Road."*, restricted only by one planning condition (found in the 1998 permission) setting the minimum distance of a caravan from a road to 2m, and the other conditional restrictions of the s52 agreement as summarised at Figure 3.3 above (except 2(ii)(b), which was amended to 2m).



4. Main Assessment

- 4.1. This Section sets out the Applicant's full case with respect to why the LDC should be issued.

Whether the Proposed Development Amounts to Lawful Development

- 4.2. We have examined the planning history of the application site and established that it has a permitted lawful use as a park home site in accordance with Permission 81/TP/334, of which only the description of development, one condition and an associated s53 agreement exists. A condition of this permission was later varied by PL/96/0714, followed by an amendment of condition (b) of the s52.
- 4.3. The site is one planning unit and the park homes on site meet the statutory definition of a "caravan". The use of land is therefore "caravan site".
- 4.4. The lawful use of a caravan site can only be restricted by planning conditions (such as to limit the number of caravans). As such, the proposed use must not be prevented by any of the conditions attached to the operative planning permissions, or legal agreements. In this instance, there are no conditions which restrict the number of caravans permitted on site, the layout of the site, or the type of occupancy of the caravans (as will be demonstrated below).
- 4.5. Notwithstanding, planning permission is only required where the proposed development or use being carried out meets the statutory definition of 'development' as set out in TCPA Section 55. The definition of 'development' includes building operations (e.g. structural alterations, construction, rebuilding, most demolition); material changes of use of land and buildings; and engineering operations (e.g. groundworks).
- 4.6. The primary point of consideration for this application, is whether the proposed stationing of 115 static caravans rather than 96, would amount to 'development' for which planning permission would be required. As caravan sites are a use of land, this would be by way of causing a material change of use. Otherwise, the proposed use would be lawful as it would not amount to 'development'.
- 4.7. It is helpful to remind the reader that planning policy matters are not relevant to an assessment of whether a proposed use is lawful. It does not matter what the land is designated for in a Local Plan, for example.

Are there any planning conditions which limit the number of caravans?

- 4.8. Having established the current lawful use, for the proposed use to be lawful it is necessary to establish if there are any planning conditions which may restrict the permission so as to prevent an increase in numbers.
- 4.9. It is accepted case law across all forms of planning that planning permissions cannot be expressly controlled by their descriptions of development. It is necessary for there to be a condition expressly limiting a use. I refer to a number of cases below which demonstrate this principle.
- 4.10. In *I'm Your Man Ltd v Secretary of State for the Environment* (1999) the court considered the grant of conditional planning permission for the "...additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years...". This case established that when planning permission was granted for a particular use, any limitation on the way in which that use was to be exercised had to be imposed by condition. In that case, the permission authorised a change of use for a temporary period, but there was no condition requiring the use to cease at the end of that period.
- 4.11. The Secretary of State had held that the temporary period in the description of development was a limitation. The court held that, in fact, such a limitation could only be imposed by condition. The court also held that, in terms of the description of development there was no difference in the character of the use between it being temporary or permanent.
- 4.12. Further, the court in *I'm Your Man* did not limit its finding as to the unlawful nature of a limitation contained



within the description of a planning permission to a restriction limiting the period of a planning permission. The court held that any restriction more appropriately controlled by condition would be an unlawful limitation if contained in the description. In the case of Harvey's Nurseries, therefore, any attempt to apply the reference to numbers in the description of development of the 1989 permission (which refers to 96 caravans) as a limitation would be unlawful, as that should have been referred to in a condition instead.

- 4.13. In *R (on the application of Resul Altunkaynak) v Northampton Magistrates' Court and Kettering Borough Council* (2012), the courts considered a planning permission that extended an existing use. This case was based on an interpretation of whether the use of the words "as an extension to" in the description of development ("*...Conversion of shop to restaurant kitchen and hot food takeaway as an extension to the premises at number 15...*") could prevent the hot food takeaway from operating on a stand-alone basis, or whether there would need to be a condition controlling this. It was argued that, because the words "as an extension to" were limitations and not a description of the use itself, the restriction could only be validly imposed by condition. This was accepted by the courts, and it was held that such a limitation could only be imposed by condition.
- 4.14. Most pertinently, in *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014], Hickinbottom J held that this principle applies to caravan sites and is now the primary case against which this issue is considered by Inspectors and Councils. We provide a copy this judgement at **Appendix 2** of this statement.
- 4.15. In this case, the Claimant had appealed against the refusal of the Local Planning Authority to grant a CLOPUD for "*siting of six additional caravans for residential use*". The site benefited from the grant of planning permission to "*replace and resite 40 static caravans and provide 14 additional static caravans (within original area) and ancillary works... all for year-round holiday use.*" The permission was subject to conditions including the following:
- "The re-sited 40 static caravans and additional 14 static caravans shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence..."*
- 4.16. The court held that the Inspector had erred by concluding that the permission restricted the number of caravans able to be sited on the site. The determinative issue was not whether the description was in restrictive terms, which it clearly was, but whether it was in the form of a condition, as per *I'm Your Man*.
- 4.17. As to whether Condition 3 was effective to restrict the number of caravans, the court held that this condition:
- "29...was clearly aimed at restricting the use of the caravans to holiday use (as the reasons for the condition make clear...) [and] reflected the description given in the grant of permission, which it does. But that is a different thing from a condition restricting the number of caravans on the site: it is simply an acknowledgement in the conditions of a limitation in the description of the development in the grant. Contrary to Miss Fernandes' strong assertion, there is simply no condition restricting the number of caravans. Any limitation found merely in the description of the development is insufficient to amount to a limitation in law for the reasons I have given..."*
- 31... If a material change of use is proposed, then planning permission will be required. If a change is not material then it is open to an authority to restrict the use within the prescribed development as described in the grant; but, following I'm Your Man, only by way of condition. In this case it would not have been onerous to have restricted the number of caravans that could be pitched on the site by an appropriate condition, as the 2005 Permission had done."*
- 4.18. In this case, even where the number of units that is referred to in the description of development is repeated in a condition (but not in restrictive terms), it cannot be treated as a restriction unless it is worded as such. Like *Cotswold Grange*, the 1981 Permission at Harvey's Nurseries has reference to a number of caravans in the description of development but no known reference in a condition, so clearly the same principles would apply. The reference to the number of units cannot be treated as a restriction and in this case, there is no further reference to numbers in the conditions set out in a restrictive manner or otherwise (as the conditions no longer exist, and we cannot know whether there was such a condition).
- 4.19. The proposal would have to constitute a material change of use for the proposed use described to be different than that which has permission. As we will further clarify later in this report, it is difficult to see how a change in the number of units as proposed would be capable of constituting a material change of use across the



application site.

- 4.20. As a planning permission for the siting of caravans is a use of land and not in itself operational development, caravans can normally be sited anywhere within an area covered by a planning permission, so long as the layout is not controlled in perpetuity. The layout of a site, the caravan types that can be sited there, and the maximum numbers of caravans that can be sited can only be restricted by condition.
- 4.21. As the 1981 permission is now lost, the only condition we are aware of is that referred to in the 1998 permission, to restrict distance of caravans from the road to 3m. The planning obligations contained in the Section 52 agreement are also capable of restricting the site. However, none of these restrict the number of the lodges that can be stationed on the site or specify a layout that must be retained. We have considered each in turn as to whether they might prohibit the proposed use.
- 4.22. Following the approval of the 1998 permission, Condition 2(ii) of the of the 1981 permission now reads:
- "No extension/addition to a mobile home shall be situated less than 2 metres from any highway or site road used by vehicular traffic"*
- 4.23. This imposes no restriction on numbers or layout. Clearly any layout must follow that 2 metre principle.
- 4.24. Following this permission, the s52 was also amended. The three obligations contained in the amended s52 agreement now read:
- "(a) No mobile home will be situated less than three metres away from any highway or site road used by vehicular traffic*
- (b) No mobile home shall be situated less than two metres away from any highway or site road used by vehicular traffic*
- (c) No outbuildings will be erected within the curtilage of a mobile home which will reduce the distance between that outbuilding and any other mobile home to less than 5 metres"*
- 4.25. None of these impose restrictions on numbers or a specific layout, so long as any proposed layout adheres to these spatial requirements.
- 4.26. Consequently, there are no conditions controlling the number of caravans that may be stationed on the site or any specific layout they must be sited in. Any number of caravans can be sited anywhere on the site so long as they adhere to model standards and the conditions of Condition 2(ii) of the 1981 permission as amended by the 1998 permission, and the amended s52 agreement. This the baseline against which the proposals should be judged.
- 4.27. We now turn to whether the proposal would constitute a material change of use.

Would the Proposals Cause a Material Change of Use?

Legal Background to Material Change of use

- 4.28. The basic tests to establish if a material change of use has occurred have been set out by a number of court decisions, notably *East Barnet UDC v British Transport Commission* [1962] and *Palsar v Grinling* [1948].
- 4.29. The way that this question has been assessed has been clarified by the Court of Appeal in the case: *Hertfordshire County Council v The Secretary of State for Communities and Local Government, Metal and Waste Recycling Limited* [2012] EWCA Civ 1473 (referred to as the 'Hertfordshire' case) (see **Appendix 3**) and *Reed v The Secretary of State for Communities and Local Government & Another* [2014] EWCA Civ 241 (see **Appendix 5**). As Court of Appeal cases, their judgements are binding.

Hertfordshire v SoS 2012

- 4.30. In this case, a Council was arguing that a material change of use had been caused by an intensification in the use of a long-established lawful scrapyards (which had then recently almost doubled its throughput via the introduction of additional modern equipment).



- 4.31. The Court of Appeal judges unanimously upheld an earlier decision of the High Court to dismiss the Council's challenge to an Inspector's decision to quash an Enforcement Notice. The Council's grounds of challenge against the judgment in the High Court were set out in Paragraph 8:

"8. The Council contend that there was a material change of use ("an MCU") of the land which justified the enforcement action taken. In demonstrating an error of law by the Inspector (and by the judge), it seeks to establish four propositions, first, that there can be an MCU merely by intensification of the use, secondly, that an MCU can be established merely by reference to the effect of the use on neighbouring properties, thirdly, that in considering an MCU, it is necessary to look at what is actually carried on and not at what potentially could have been carried on under the existing permission and, fourthly, that, in assessing the effect of operations on site on neighbouring land, it is immaterial whether the impact results from decisions of the operator or as a result of the actions of third parties, such as government requirements" (LPL Emphasis).

- 4.32. The court rejected the position that a) a material change of use can occur only having regard to off-site effects, and b) that it is only necessary to look at what is happening on the land in assessing the character, and not to what could potentially be carried out under existing permissions. We discuss these below before discussing the High Court judgment which was unanimously upheld by the Court of Appeal.
- 4.33. At Paragraphs 25 and 26, the Lord Judges were clear that any planning consequences (i.e. off-site effects) arising from the proposed development must be seen within the context of a change in the on-site character and that any change must be material. Off-site effects, however great, cannot alone amount to material change of use.
- 4.34. They stated:

"25. The judge went on to hold that, even if other considerations are taken into account, the Inspector was entitled to conclude that a change of use was not, on the evidence, established. Much of the Council's criticism is directed to those parts of his judgment dealing with the extent to which changes in effect are capable of creating a material change of use and with the materiality of changes affecting the use of the site which are extraneous to the operator's activities. I do not find it necessary to consider those issues in any detail. M and WR rightly accept that it is permissible to consider off-site effects when assessing whether an MCU has been established. In assessing whether there is a change of character in the use, its impact of the use on other premises is a relevant factor. It is necessary, on the particular facts, to consider both what is happening on the land and its impact off the land when deciding whether the character of the use has changed.

"26. When the judge said, at paragraph 41, that: "of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land," he was, in my view, saying no more than that impact cannot be considered in isolation from what is happening on the land. As Elias J put it in R (on the application of Stephen John Manning) v South Lakeland District Council [2005] EWHC 242 (Admin), at paragraph 8:

'Perhaps the key point here is that the impact of a particular use is an integral part of the character of that use, so that even though the relevant use itself may not change, save in the intensification itself, that will, in an appropriate case, be capable of constituting a change in character.'

- 4.35. It is clear that a material change of use can only occur having regard to what is happening on the land but including references to off-site effects to determine if there's a material change to the character.
- 4.36. The Lord Judges dismissed the challenge by the Council on all grounds, effectively relying on the High Court judgment for detailed reasonings, noting that they wholly endorsed Ouseley J's judgment as sound. We now turn to the High Court judgment (Copy found in **Appendix 4**).



4.37. On change in the character of the use, Ouseley J for the High Court states at Paragraph 40:

"Although the concept of a material change of use can be expressed clearly enough as a concept, it is elusive in practice, perhaps even illusory. But one point is clear from all the authorities, and the Inspector expresses it correctly...: the change relied on has to result in a material change of the use of the land, and it can only do that by bringing about a definable change in the character of the use made of the land."

4.38. The High Court considered the extent to which environmental effects can be taken into account in Paragraphs 41 and 42:

"41. I have no difficulty in seeing that significant environmental effects, experienced on or off-site, may support the contention that a material change of use of land by intensification has occurred. There are plenty of authorities to that effect. But I do not see how effects, whether on or off-site, can themselves constitute a material change in the use of the land. The concept focuses on the use made of a particular piece of land. I do not see how an increase in lorries, for example, arriving in the road at unsocial hours, or creating problems at a junction a mile away, or an increase in noise or dust experienced off-site from activities on-site, is capable of itself or themselves, whatever the degree of increase, of constituting a material change of use on a particular site. It may be very relevant to the argument that there has been a material change in the character and use of land. For example, a specialist gas bottle disposal facility might be treated as a materially different use from a general scrapyards because of its noise impacts. But of itself, an increase in noise impact, however severe, cannot be a material change in the use of the land.

42. The relevance of impacts comes in evidencing a material change of use of the land, a definable change in its character, but one which is defined by a material change in use, not by a change however severe or minimal, in the effects of a use."

4.39. It is clear, therefore, that the starting point in considering whether there has been a material change of use must not be the off-site effects, it is deciding whether there is a definable change in the character of the use of the land itself.

4.40. Conversely, this case also examined the extent to which intensification alone can cause a material change of use. Justice Ouseley adds at Paragraphs 43 and 44:

43 Although authorities, in the Court of Appeal for example in Fidler v the First Secretary of State [2004] EWCA Civ 1295 at paragraph 28, and earlier in, for example, Lilo Blum v the Secretary of State for the Environment [1987] JPL2 78 per Simon Brown J, treat the principle of a material change of use by intensification as well established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.

44. In Brooks and Burton Limited v the Secretary of State for the Environment [1977] 1 WLR 1294, Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one."

4.41. It is clear therefore that the intensification of a site cannot, of itself, create a material change of use. Neither can its off-site effects on their own. In conclusion on the point of change in the definable character of the use and off-site effects, Justice Ouseley states (Paragraph 45):

"...But for all that, the cases have all emphasised the need to identify a material change in



the definable character of the use of the land. None of them has suggested that this could be done simply by reference to examining impacts alone, relevant though they are to that crucial issue in a material change of use by intensification case.”

- 4.42. As such, any planning consequences arising from the proposed development can be considered to be contributing material factors in determining whether any change in the definable character of the use is material. However, if there is no identified change to the on-site character of the use, then the planning consequences, no matter how severe, could not on their own change the definable character of the use. On this basis, it is a pre-condition that there must have been a change in the on-site character of the use for there to be a material change of use. Once it is accepted that there is a change in the definable character of the use, in deciding whether such a change is material, it is relevant to then look at the off-site effects.
- 4.43. The High Court also provided guidance on how to assess the change in on-site character.
- 4.44. It states from Paragraph 35:

*“35. In any event, I am not persuaded that the factors she excluded were material considerations, however, the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. **A change in the nature of activities on the site**, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use as was the case here, **the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.***

*“36. Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as it necessary to constitute a material change of use, **the level at which that activity did or could occur without giving rise to a material change of use has to be ascertained.** It is only what happens above that no doubt not very clearly defined baseline which can contribute to the material change of use. **In so far as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.***

*“37. I do not doubt that a combination of intensification and other changes in activities can constitute a material change of use; **but what could be done without the need for permission would still have to be ascertained...** So even if effects could prove that a material change of use had occurred, they had to be effects generated by activities **beyond those which did not require planning permission.**” (Laister emphasis).*

- 4.45. It is clear that any potential effects which do not need planning permission but would also be lawful must be discounted from the assessment of the change in on-site character as being ‘permitted effects’. It is only the effects arising from the proposed change that matters (the effect of the increase which matters). The Council's third challenge to the Court of Appeal was to argue that one must only assess the actual use and not the potential effects arising from all other lawful forms of the same use within the site. The Lord Judges dismissed this ground in the Court of Appeal judgment and upheld the approach of the High Court referred to in the above paragraphs.
- 4.46. Considering the principles of the Hertfordshire case, it is necessary to consider the whole range of potential permitted effects and discount those from the effects arising from the increase, to determine if there would be a change in the definable character. We go through this exercise below.

Reed V SoS 2014

- 4.47. In addition, the Court of Appeal at *Reed v SOS [2014]* (see **Appendix 5**) confirmed that although intensification of the use can point towards a material change of use, if there has been no change to the definable character of the land other than intensification, then it would be difficult to argue a material change of use has taken place (see Paragraph 21). At *Reed*, the case revolved around an alleged material change of use from mixed use

equestrian purposes and the stationing of one static mobile home and one touring caravan to mixed use for equestrian purposes and stationing of two static mobile homes, touring caravans and one storage container had occurred.

- 4.48. The Court of Appeal overturned a decision of the High Court to uphold an Inspector's Appeal Decision in relation to finding that a doubling of caravans on the site amounts to a material change of use. The Court of Appeal was clear that it is the character of the use of the land which must be assessed. The use of the land was mixed use for a caravan site and another use. It remained as such, according to the Court of Appeal, despite the increase in caravans.
- 4.49. The key paragraphs in the Court of Appeal decision in relation to the tests of how to assess a material change of use starts in in Paragraph 21:

"If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a 'doubling of the number of caravans'. A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.

"...the only matter to which the inspector had regard when deciding whether there was or was not a material change of use was the number of caravans. That would suggest that the inspector was adopting the erroneous - mere intensification amounts to a material change of use - approach.

- 4.50. If one then turns to paragraph 89 of the judgment, in which Mr Greateorex's submission that materiality was a matter of judgment for the inspector was accepted, there is no dispute with that proposition so far as it goes but in deciding the issue of materiality as a matter of planning judgment, the Inspector had to correctly direct himself to the question, which he did not do. The question was not simply whether the number of caravans had increased, it was whether the definable character of the mixed use had materially changed.
- 4.51. It also refers to the principle established in the *Hertfordshire* case referred to below as being applicable to caravan sites, in the following paragraphs:

"26. Turning to paragraph 90 of the deputy judge's judgment, I would respectfully disagree with his conclusion that the Hertfordshire case could be distinguished on the basis that in that case there was one and the same scrap yard whereas here we have two caravans rather than one. Here, we have two caravans rather than one caravan on the same caravan site. In Hertfordshire one had a scrap yard which had virtually doubled in its output. I therefore do not consider that Hertfordshire can be distinguished on the basis adopted by the deputy High Court judge. Moreover, the underlying principle which emerges from Hertfordshire, namely that mere intensification is not sufficient if it falls short of materially changing the definable character of the use of the land, is a principle which was directly applicable to the circumstances of this case as soon as the inspector had decided to correct the allegation of breach of planning control in the notice in the manner that he did.

*"27. Mr Greateorex sought to persuade as that, unlike the kind of permission that might have applied in the scrap yard case, where there is a general permission for a type of use, the permission given on appeal in the present case was a very narrow one. He submitted that the permission had to be read as a whole and that included the conditions which meant that the permission was not simply a permission for a caravan site for a gypsy family, but it was a caravan site very tightly hedged about in terms of who could occupy the caravans, the number of caravans, their position on the site and so on and so forth. **It seems to me that***



that submission confuses matters which might well have been relevant if the alleged breach of planning control had been a breach of condition, with the breach of planning control that was actually alleged in the notice as corrected by the inspector: a material change of use. The inspector was simply concerned with whether there had been a material change in the character of the mixed equestrian and caravan site use.

28. For these reasons, whether one focuses on the judge's reasoning or on the inspector's reasoning in paragraph 31 of the decision, I for my part am left in no doubt that the inspector did apply the wrong test, namely a mere intensification test, and that therefore this appeal should be allowed."

- 4.52. The *Reed* case confirms that the 'mere intensification' of the use of a site is not necessarily a material change of use, but the question is whether intensification is such that material change to the definable character of the use of the land has occurred. More importantly, it clearly refers to the fact that an unrestricted caravan site remains the same caravan site in character of use terms regardless of the number of caravans stationed on it, in the same way as generally, a scrapyard remains a scrapyard regardless of an increase in the same use.
- 4.53. Applying this to the 1981 permission, it is clear that Paragraph 27 of the Court of Appeal judgment strongly supports the position that the definable character would not change as the site would remain a caravan site, simply with 115 units instead of 96 units, and there would not be a material change of use.

Childs V SoS 2005

- 4.54. *John Childs v the First Secretary of State and Test Valley BC 2005 [2005] EWHC 2368 (Admin)* case is often referred to with regards to questions of material change of use by intensification and relates to multiple Section 192 LDC applications for use of a site for 8, 15, 30 or 50 caravans. It predates both *Hertfordshire 2012* and *2014* the *Reed 2014* cases above, so is normally considered to be superseded and out of date, but is often cited despite the passage of time since it was first delivered. A copy of the Court's decision can be found in **Appendix 6**.
- 4.55. A Section 191 LDC certified the site was lawfully used as a residential caravan site for four caravans in 2003, and it is understood that the area of the LDC covered the whole of the site including the area where the four caravans were sited. The Appellant had argued that as the whole of the site was certified as a residential caravan site in accordance with the LDC issued in 2003, and thus the proposed developments would not result in a change to the use if the additional caravans were sited on it. The Council refused the applications, and these decisions were appealed. The Inspector also refused to allow the Appeal on the basis that the intensification in use amounted to a material change in the use of land. The Appellant in that case sought a judicial review of the decision taken by the Inspector.
- 4.56. It was found that as the LDC applicable to the site referred to a specific number of caravans being found on site (i.e. a reference to scale), and the question was therefore whether going from four to eight units on the land was, as a matter of fact and degree, considered to materially change the use of the land. It had been found to be the case that the change was in fact altering the character of the use as it would be of a different scale.
- 4.57. In Paragraph 27 of the *Childs* case report (as noted in the *Journal of Planning Law* 2006, starting from Page 1336), the judgement discusses the question of scale. *"The question then is whether it is a material change of use. From four to five has, as a matter of fact and degree, been found not to be material. From four to eight has, as a matter of fact and degree, been found to be material, given the change in the character of the use that the difference in scale would produce."*
- 4.58. In Paragraph 28 of the judgement, which states:

"The description in the 2003 certificate was not confined to a part of the field that it was lawful to use as a residential caravan site. Therefore, the lawful use as described applied to the whole of the field. There was no description by reference to space within the field. If the description had been silent as to the numbers, then no doubt the lawful use would have applied without reference to the numbers. In that case, a change, however considerable in

numbers, might well not involve a change in use, still less a material change...”

- 4.59. In Paragraph 33, it goes on to state: *“Once one has a definition of the existing use, and that definition validly contains a reference to intensity of use, then an intensification of that use does not necessarily amount to a material change of use, but a change of use is not excluded, and the change may be material. I do not regard the position as being comparable to a situation where a use falls within a class in a use classes order. Then there may be no change of use in a relevant sense if the use remains within the same class. This seems to me to be the effect of the ‘Brooks and Burton’ case.”*
- 4.60. It is clear that it was only by scale that the Administrative Court could make a clear distinction as to what was being proposed versus what was permitted and this enabled them to decide whether a material change of use would occur with the proposed development. This distinction gave the Court the ability to state that going from 4 to 5 caravans was not a material change but that going from 4 to 8 or more was considered a ‘material change’ (not just any change) which required planning permission.
- 4.61. It is noted that the judge was persuaded that his judgment could have wider implications and should be assessed again at the Court of Appeal (at Paragraph 71, the judge grants permission for the claimant to appeal to the Court of Appeal). It is not known why the judgment never reached the Court of Appeal (there could be many factors in this, such as the claimant’s adversity to incurring more costs, etc).
- 4.62. The judgment has to be seen within the context of what has taken place since it was made by the judge. The site is now known as Valley Field Park. Whilst all cases need to be treated on their own merits, following the court’s decision, the owner then adopted a piecemeal approach to gradually increase numbers over time. After several years of obtaining a series of CLEUDs and CLOPUDs relating to incremental increases in the number of caravans that would be lawful on site, the owner has now successfully obtained a CLOPUD which confirms that 9 residential mobile homes would be lawful on site, an increase of two units over the 2023 baseline. The number of caravans now lawful on site is some 225% more than the original baseline that was assessed by the court in 2005. In light of these facts, it is almost certain that the decision in the *Childs* case should now be treated with caution, because the number that is lawful is now above the number which was found to be a material change of use in the 2005 High Court judgment. Indeed, had the judge had the benefit of the Court of Appeal judgments in *Hertfordshire* and *Reed*, it is not clear whether the judge would have decided the case in the same way. A copy of the CLOPUD issued on 19th May 2023 can be found in **Appendix 7**.
- 4.63. The *Childs* case serves to demonstrate that it is necessary to apply caution in determining that an increase in caravans might cause a material change of use by altering the definable character of the use, as a series of applications for a smaller quantum of proposed increases might result in the same or more caravans becoming lawful over time that might be rejected if proposed outright. In *Childs*, the judge even agreed that his decision could be challenged to the Court of Appeal given the outcomes.

Summary of Court-Related Case Law

- 4.64. The test is not just whether a change has occurred, but a ‘material change’ has occurred – i.e. the change has to be considered ‘material’ and so significantly different that it amounts to a different use to that which is lawfully permitted – i.e. it alters the definable character of the use of the land.
- 4.65. The courts have held that a material change of use can only occur where there would be both a change to the definable character of the use of the site, and a recognition that this change is material. Off-site effects may be considered when assessing whether the change is material, but off-site effects do not form part of the consideration of whether there is a change in the character of the use, which only relates to the land itself. Mere intensification cannot itself amount to a material change of use.
- 4.66. Indeed, specifically following the Court of Appeal’s decision on *Hertfordshire* on permitted effects, it can be clear that an increase in the number of caravans simply amounts to ‘mere intensification’ (which by virtue of the word ‘intensification’ must mean an increase in scale/numbers of caravans), but that this would not itself amount to a change in the character of the use of the land: a caravan site remains a caravan site regardless of the number of caravans on it. In this regard, the *Hertfordshire* case establishes two key principles relevant to the case here:

- In quoting Tapp, it confirms that an increase in activity by way of intensification would have to lead

to some other change for it to be materially different (i.e. a hobby turning into a business). At Harvey's Nurseries, the site remains a caravan site, so changes will typically amount to 'mere intensification' in principle.

- 'Permitted effects' need to be taken into account (i.e. what is already allowed or what could be carried out on site) when assessing whether a material change of use had occurred. The assessment of effects would only include those which would be over and above what is already allowed.

4.67. At Harvey's Nurseries, the site is subject to a planning permission for caravan site without condition or limitation which restricted the number of caravans on the site. The existing 96 static caravans can therefore lawfully:

- be replaced with larger caravans (so long as the new units remained 'caravans' according to the statutory definition); and,
- be relocated to anywhere within the site, being a single planning unit.

4.68. All of these changes form 'permitted effects' which need to be discounted from any assessment of change, and furthermore, any assessment of the materiality of any identified change in the character.

4.69. The *Hertfordshire* case is quite significant, in that the throughput of a scrap yard was doubled without there being a material change of use, and this was upheld at both the High Court and the Court of Appeal. Equally, the *Reed* case was also upheld at the Court of Appeal and confirmed in two points within the judgment (Paragraphs 21 and 26 of the Court of Appeal judgment) that a caravan site normally retains the character of a caravan site (its planning use) regardless of whether it has 1, 2 or 4 caravans on it.

4.70. The *Childs* case is known to be taken on its specific facts, and those facts have been superseded by more up to date Court of Appeal cases (as well as reality). Indeed, the Judge in the case agreed that the case warranted being heard by the Court of Appeal, although it wasn't taken that far. It is our view that the decision has limited merit going forward, given the outcome of recent LDC decisions show that more units on the site than the court agreed was material change back in 2005 are now lawful, although achieved through a series of smaller developments. The case also predates the key matters that have now been considered by a higher authority (the Court of Appeal at *Hertfordshire* and *Reed*).

4.71. The outcome is that the matter of whether an increase in the number of caravans within caravan site would not normally amount to a material change of, when having regard to the permitted effects and the existing character of the use, as any change is unlikely to be material.

Appeal Case Law

4.72. We now turn to Appeal case law. Appeal cases have also looked at the matter of intensification of the use of the site against material change of use, with relevant cases for the current proposal including as follows:

- Cannisland Park (Appeal Ref: APP/B6855/X/18/3213425) (**Appendix 8**);
- The Smithy, Brigdnorth (Appeal Ref: APP/J3205/X/09/2099134, (**Appendix 9**);
- Greenacres, Suffolk (Appeal Ref: APP/W3520/X/07/2039698, (**Appendix 10**);
- Kings Copse Park (Appeal Ref: APP/Q3115/X/19/3240630), overturned by the High Court Order (Ref CO/281/2021) - see **Appendix 11**).

4.73. We also discuss the relevance of White Horse Park (Refs: APP/F1230/X/18/3206065 & APP/F/1230/X/18/3206069, see **Appendix 12**).

Cannisland (APP/B6855/X/18/3213425)

4.74. At Cannisland Park, an application for the proposed use of ancillary land for the siting of 15 additional caravans was sought, in addition to the 45 caravans that were already found within the caravan park (**Appendix 8**). At Paragraph 11, the Inspector noted that it was already common ground between the Council and the Appellant that the proposed development would not constitute a material change of use. He states:



"Indeed, the development would not result in materially different planning circumstances to that currently, or potentially, found at Cannisland Park and, as a matter of fact and degree, the development would not result in such a change to the definable character of the use or area that it would result in a material change of use. In coming to this conclusion, I have had full regard to the impact of the development on other uses and premises, including those relating to amenity and traffic. I am also satisfied that such a finding is consistent with the principles established in the judgements referred within the evidence, including the Reed, Metal and Waste Recycling and Childs cases."

- 4.75. The LPA also accepted this principle, that there would be no material change of use. The CLOPUD was issued at Appeal.
- 4.76. This demonstrates that a net increase in the number of caravans on a site and an intensification of the use is deemed alone not to result in such a change to the definable character of the use that a material change of use would result.
- 4.77. In this Cannisland case, an increase in the total number of caravans from 45 to 60 is an increase of 33%.

The Smithy (APP/J3205/X/09/2099134)

- 4.78. When looking at the Smithy decision (**Appendix 9**), it can be summarised that the application sought the use as a residential caravan site accommodating 6 caravans. The existing caravan site had a planning permission for one mobile home. The proposal sought to increase the number by 5 units (an increase to the park of 600%). In Paragraph 14, the Inspector quotes the key line from the case referred to as Lilo Blum 1986, and this confirms that:

"a proposal simply to increase the scale at which a use operates is unlikely by itself to amount to a material change of use. Rather, what needs to be considered is whether the proposed increase in scale would change the character of the land and its use sufficiently for it to be concluded there is a material difference between the existing use and the proposed use."

- 4.79. At Paragraph 15, the Inspector noted that the mobile home on site is visually prominent and highlights that what is permitted is a 'caravan site', although what exists is a low-key site. Following on, at Paragraph 16, the Inspector indicated that with the increase in units, the site would change, in that there would be more hard surfacing, activity, traffic and paraphernalia, but then concludes:

"But there is no substantial evidence before me to demonstrate that the essential character of the use made of the land would change. The land currently has the character of a caravan site, and, in my view, that is the character it would have with the additional caravans there... It would simply be more of the same use"

- 4.80. This demonstrates that 'more of the same' is not considered a material change of use. The Smithy benefitted from an increase of 600%.

Greenacres (APP/W3520/X/07/2039698)

- 4.81. Under Greenacres Park (see **Appendix 10**), the application sought an increase in the number of caravans on a lawful caravan site from 6 to 12 (a doubling). At Paragraph 3 the Inspector referred to the Brooks and Burton 1977 case and held that in assessing whether there was a material change of use, account had to be taken of the existing character of use, including consideration for the planning consequences and environmental impact of a particular use. The Inspector emphasised the change must be material as a matter of fact and degree for there to be a material change of use.
- 4.82. AnItis clear that, in line with *Hertfordshire* and *Reed*, it is first necessary to decide if there will be a change in the character of the use of the land. If there will not be a change in the character of the use, then there is no need to assess if that change would be material. If there is a change in the character of the use, then we would need to consider whether that generates a material change of use. As part of that exercise, we can consider the extent to which off-site effects could contribute to there being a material change of use.

Kings Copse Park (High Court Ref. CO/281/2021)

- 4.83. At Kings Copse Park, Oxfordshire, an Inspector's decision (Ref: APP/Q3115/X/19/3240630) was overturned by the High Court Order (Ref CO/281/2021) where an Inspector dismissed an Appeal for the proposed stationing of 145 caravans in place of 116 caravans on the basis that the increase would cause a material change of use (25% increase). The LPA (South Oxfordshire District) subsequently issued an LDC to confirm that it was lawful to station 145 static caravans in place of 129 caravans, after initially granting a CLOPUD to increase from 116 caravans to 129 caravans whilst the Appeal was being determined (11% increase). This serves to demonstrate that it is necessary to assess whether there are permitted lawful uses within the remit of the existing planning status, the effects of which need to be discounted from any assessment change, because a series of smaller developments may in fact demonstrate that a larger development than as is proposed is lawful, and so the proposed use itself must therefore be lawful. This is the same point as relevant to the Childs case based on its current situation as Valley Field Park, where LDCs have been issued for more caravans than was considered lawful at Childs.
- 4.84. Copies of the High Court Order and relevant LDCs are enclosed in **Appendix 11**.

White Horse Park (APP/F1230/X/18/3206065 & APP/F1230/X/18/3206069)

- 4.85. Also relevant is the White Horse Park appeal decision, made on 3rd June 2019 (see **Appendix 12**). An Inspector confirmed that the movement of caravans around an established site would not cause a material change of use, where the layout was not controlled. The Appeals were allowed.
- 4.86. Indeed, this reflects the position established in the *Hertfordshire* series of court cases that for there to be a material change of use, a change in scale is a necessary prerequisite (although a change in scale does not automatically mean a material change of use has occurred). As such, it is already lawful to station caravans within any part of the caravan site. This reflects what Ouseley J stated in Paragraph 35 of the *Hertfordshire* High Court decision: *"In any event, I am not persuaded that the factors she excluded were material considerations, however, the case had been presented. The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself."*
- 4.87. It is therefore lawful to move caravans around the site without causing 'development'."

Would the Proposal Result in a Change in the Character of the Use of the Site?

- 4.88. The Oxford English Dictionary defines 'character' as "The distinctive nature of something" and makes reference to the phrase 'in character' as "In keeping with someone's usual pattern of behaviour and motives".
- 4.89. On this basis, it can be said that, for a use of land to change its character, the 'distinctive nature' of the use, as well as its 'pattern of behaviour', would need to change, when compared to the lawful use of the land.
- 4.90. The current use of the planning unit is a caravan site, which currently includes 96 caravan units in total. With the addition of 19 caravans proposed by this application, the number of caravans in the planning unit would be 115. The use of the land would remain the same, i.e. a caravan site. The character of the use would also therefore remain the same, i.e. as a caravan site.
- 4.91. In the *Reed* case, an appellant was successful in demonstrating that an Inspector had applied the wrong test for material change of use and erroneously concluded that mere intensification amounted to a material change. The appellant had been granted planning permission for the use of part of the land which he occupied as a caravan site for his family. The other part of the land was used for equestrian purposes. The appellant replaced his original mobile home with a larger one in a position that was not in accordance with the conditions attached to the grant of planning permission. In deciding the appeal against enforcement action, the Inspector had concluded that doubling the number of caravans on the site constituted a material change of use. This view was then endorsed by a High Court judge, but the Court of Appeal considered the judge had erred in his treatment of *Hertfordshire* and that the Inspector had applied the wrong test in concluding there had been a change of the mixed use on the sole basis that there was an additional caravan on site. The question should

have been whether the definable character of the mixed use had changed and not the number of caravans on site. Therefore, it was held that the 'mere intensification' in and of itself would not necessarily amount to a material change of the character of the use of the land.

- 4.92. We have established that the lawful use of the application site is a caravan site. The proposal is to site 19 additional caravans on this land. As established above, the definition of a caravan site is *"land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed"*. Under this proposal the use of the land would remain a caravan site.
- 4.93. It seems inconceivable that a caravan site with 96 caravans would have a different character of use to a caravan site with 115 caravans. Both are caravan sites, and both would still incorporate other ancillary uses. Again, there are also no conditions controlling the number of caravans that can be sited on the application site. Whilst the increase in the number of caravans could be viewed as an intensification of the use, the above cases confirm that mere intensification of itself is not enough to trigger a material change of use if it does not change the definable 'character' of the land. In this case the definable 'character' of the land remains a caravan site.
- 4.94. In line with the *Hertfordshire* and *Reed* cases, no further assessment of off-site effects is necessary, because if the character of the use is the same then any changes to off-site effects cannot be material. Without prejudice to this, we have however provided a brief review below.

Would the Proposal Effect Neighbouring Uses and the Locality?

- 4.95. The *Hertfordshire* case established that only when there is an identifiable change in the character of the use can the potential external effects of the proposal be assessed to assist with determining if that change is material. Whilst we have already established that there would be no change in the character of the application site, for completeness we consider external impacts and neighbouring uses. We are assessing here whether the increase in caravans, by a total of 19 units, would have different off-site impacts.

Neighbourhood Amenity

- 4.96. The application site lies immediately east of a residential cul-de-sac, 'The Horse Close', and the access road to the site runs along the rear of this road and past several larger residential properties. However, the site itself is well removed and contained away from these areas, separated by mature vegetation. There is woodland north of the site and open fields of Caversham Park to the east, with allotments to the south.
- 4.97. Those properties are already located adjacent to the caravan site, which is largely screened by existing trees and hedges along outer boundaries. The proposal would not result in any material loss of outlook, privacy, amenity, light and nor would it result in any material sense of increased enclosure upon neighbouring properties.
- 4.98. As such, the proposal would not amount to any perceivable change in external effects compared to the lawful use already permitted and therefore would not lead to a material change of use as a result of neighbouring amenity to the extent that it would change the off-site impacts.

Visual Amenity and Landscape.

- 4.99. With regards to landscape, there would be no material changes in levels, boundary treatment or mature trees on site to a degree which would increase the impact of the site on the local or wider landscape in any material way.
- 4.100. When viewed from off-site, the stationing of the 115 caravans rather than 96, would not be noticeable and any views would be seen in the context of the site operating as a caravan site, in both scenarios. Given the nature of the site, how well it is contained, and its relatively small scale, the perception of it from the road or other viewpoints would be no different. It would present no material change to the character and appearance of the site and wider area. Thus, the proposed use of the site would not result in material off-site impacts regarding visual amenity and landscape.

Traffic



- 4.101. The site is within the built-up area of Caversham, north Reading. It is long accepted that the site was suitable for a residential caravan site in that context, with an access gained off Peppard Road. We are not aware of any traffic or transport problems that would be unacceptably exacerbated by the additional caravans that would result in a material change of use. In the case of *Hertfordshire*, a near doubling of output accompanied by a large increase in lorries accessing that site was considered, and it was held that any increase in off-site noise from the increased passage of lorries did not mean there had been a material change of use of the land, despite the scale of change. Therefore, it is apparent that matters of traffic are unlikely to be material in planning terms because they would fall within the 'permitted effects'.
- 4.102. We have found that there would unlikely be a change to the definable character of the site, as the site would remain a caravan site. Its onsite character would remain the same. A material change of use is not possible as the first test for one to occur has failed. Notwithstanding this conclusion, we have looked at off-site effect and have found that these are unlikely to be material, which points to any change being immaterial. The proposals fail the second test for there to be a material change of use. We can therefore conclude that there would not be a material change of use caused by a proposal to increase the number of caravans within the established caravan site from 96 to 115.



5. Conclusion

- 5.1. In overall conclusion, this CLOPUD application seeks to establish the lawful principle of siting 19 additional static caravans for permanent residential occupation within Harvey's Nurseries, without the need to obtain planning permission.
- 5.2. The site benefits from permission 81/TP/334 for:
"The continued use of land as a mobile home park and its occupation by no more than 96 homes, continued use of land and buildings for the sale and maintenance of mobile homes, continued use of the improved access road to Peppard Road."
- 5.3. Due to the loss of the documents for 81/TP/334, only the description of development and Condition 2 of the permission remain.
- 5.4. As such, the site is restricted only by one planning condition, found in the 1998 permission, setting the minimum distance of a caravan from a road to 2m, and the other conditional restrictions of the associated s52 agreement, which are as follows:
"(a) No mobile home will be situated less than three metres away from any highway or site road used by vehicular traffic
(b) No mobile home shall be situated less than two metres away from an highway or site road used by vehicular traffic
(c) No outbuildings will be erected within the curtilage of a mobile home which will reduce the distance between that outbuilding and any other mobile home to less than 5 metres"
- 5.5. The entirety of the site is a single planning unit used as a caravan site by virtue of the 1981 permission and for no other use.
- 5.6. There are no planning conditions limiting the site's use to 96 caravans, and no conditions exist which can control the layout of the development, other than model standards spacing requirements contained in the s52.
- 5.7. The proposed use is to station an additional 19 caravans within the site. However, the exact location is not defined, and they could be stationed anywhere within the area governed by the planning permission.
- 5.8. If additional caravans are stationed on the site, then the question that must be asked is does the proposal amount to a material change of use? The process for examining this is prescribed in law and for there to be a material change of use, there must be a change in the definable character of the use itself.
- 5.9. The operative case law sets out a two-step process to determining if there is a material change of use: after identifying the baseline character, an assessment has to be carried out as to whether there would be a change in the definable character of the use, having regard only to the changes that would occur on site with the proposed use. The second step is that, if a change has been identified, it is necessary to determine whether that change is material, having regard to both on and off-site effects.
- 5.10. Binding case law from the Court of Appeal has consistently confirmed that intensification alone cannot cause a material change of use. Where there is no identified change to the on-site character of the use then there cannot be a material change of use. Even if there is a change, the change has to be found to be material before it can cause a material change of use. Case law, particularly appeal case law, also shows that an increase in the number of units within a site is unlikely to amount to a material change of use, rather forming 'mere intensification' which does not normally require planning permission, specifically for caravan sites.
- 5.11. The current use of the whole planning unit is a caravan site accommodating 96 caravans. This proposal for an additional 19 caravans would bring the total number of caravans in the planning unit to 115. In the *Reed Case* (2014), the Court of Appeal overturned a High Court Decision to allow a doubling of units and confirmed that the character of a caravan site remains regardless of the number of caravans stationed within it. In *Hertfordshire*, the Court of Appeal confirmed an Inspector's decision to conclude that a doubling of throughput of an existing scrapyard was not found to cause a material change of use.



- 5.12. The proposed use is for a caravan site with 115 caravans, and so in its simplest form, the site remains a caravan site, which is no different to its existing use, given an increase in numbers cannot on their own amount to a material change of use (where there is no change to its definable character). This only represents a 19.7% increase, which is well below the appeal decision examples that we have provided.
- 5.13. We have examined the potential change arising from the proposed use and found that there is unlikely to be a change to the definable character, having regard to the permitted effects, which remains a caravan site. Case law is equally clear that off-site effects cannot on their own cause a material change of use as the change has to be seen within the context of the use of land itself. We have found no off-site effects which are likely to mean that any change (if any existed, which we doubt) would not result in the change being found to be material.
- 5.14. In summary, the existing use of the site is a caravan site, and the proposals would not cause 'development' - i.e. a material change of use by intensification. We have demonstrated that there would be no change in the definable character of the use as a result of the proposal, so there cannot be a material change of use, and the additional caravans would therefore be lawful.
- 5.15. We therefore invite the Council to issue the requested CLOPUD on this basis.



Appendix 1: 1998 permission documents and associated s52 agreements.



Appendix 2 – The Cotswold Grange Country Park High Court judgment



Appendix 3 – The Hertfordshire Court of Appeal judgment



Appendix 4 – The Hertfordshire High Court judgment

Appendix 5 – The Reed Court of Appeal judgment

Appendix 6 – The Childs High Court judgment



Appendix 7 – The Valley Field Park CLOPUD



Appendix 8 – The Cannisland Appeal Decision



Appendix 9 – The Smithy Appeal Decision



Appendix 10 – The Greenacres Appeal Decision



Appendix 11 – The Kings Copse Park Court Order and LDCs



Appendix 12 – The White Horse Park Appeal Decision



Appendix 13 – Planning History List

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