APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE PROPOSED SITING OF A CARAVAN FOR ANCILLARY RESIDENTIAL USE, LAND AT HARVEST HOME, LOWGATE, GEDNEY, SPALDING, PE12 0BL

SUPPORTING STATEMENT

Submitted on behalf of Mr J and Mrs L Bruin by

OWNLAND
HOMES

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SUPPORTING STATEMENT

1. Introduction:

This application is submitted by **Own Land Homes** under the provisions of Section 192 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991) which states that if any person wishes to ascertain whether:

(a) any **proposed use** of buildings or other land, or
(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, they may make an application for the purpose to the Planning Authority specifying the land and describing the use or operations in question. If, on an application under this section, the Planning Authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted, or begun at the time of the application, they should issue a **Lawful Development Certificate** to that effect.

The application is being submitted in order to seek South Holland District Council's confirmation that the **proposed siting of a caravan**, within the curtilage of Harvest Home, Lowgate, Gedney, Spalding, **for ancillary residential use**, would be lawful having regard to the provisions of the 1990 Act.

2. Site Description:

The application site comprises Harvest Home, Lowgate, Gedney, Spalding, and its garden grounds. Harvest Home is a single storey, brick built, dwelling that sits in approximately 1.0 acre of garden grounds. Photographs of the application site are contained in Appendix 1 to this Supporting Statement.

3. Relevant Planning History

There have been two planning applications submitted in respect of the current application site. These can be summarised as follows:

- H06-0381-95 - Erection of Dwelling – Refused 12 April 1995; and
- H06-0257-10 - Erection of Dwelling – Refused 30 March 2010.

4. Supporting Statement and Evidence:

As the current application falls to be determined having regard solely to matters of evidential fact and law, with the onus of proof on the applicant, there is no requirement for it to be publicised under the provisions of the 2010 Development Management Procedure Order. Similarly, as the policies of the Development Plan (or the National Planning Policy Framework) are not relevant to the determination of an application submitted under the provisions of Section 192, any concerns regarding potential impact on the character or appearance of the area, or neighbouring amenity, are not matters that the Council can attach any weight to. Having said this, every effort will be undertaken to ensure that the proposed caravan will be sited so as to minimise any potential adverse impacts.

Furthermore, in appeals which raise legal issues where the onus of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is the "balance of probability". As this test will accordingly be applied in any appeal against their decisions, planning authorities should therefore not refuse a Certificate because the applicant has failed to discharge the stricter, criminal burden of proof beyond reasonable doubt. Moreover, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application.

Planning permission can only be required where **development** takes place, and development is defined in Section 55(1) of the Town and Country Planning Act 1990 as being:

"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."

This definition has two 'legs'; one involving permanent **physical alterations** to land, and the other involving **material changes of use** of buildings or land. Section 55(2)(d) of the Act then states that "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is exempt from the definition in Section 55(1).

The **caravan** to be **sited** on the land the subject of the current application will comply with the statutory definition of a caravan in every respect. No operational development as defined by Section 55(1) will take place.

Having regard to the above, the central questions to be asked when deciding whether or not to issue the Certificate of Lawful Use applied for will be:

a) Will the 'unit' be a caravan as defined in the Caravan Sites and Control of Development Act 1960 (as amended)?;
b) Will the caravan be sited with in the garden grounds of the primary dwelling?; and
c) Will the caravan be used solely for purposes ancillary to the use of the primary dwelling?

Each of these questions must be answered in the affirmative in order for a Certificate to be issued. Taking each of the questions in turn:

Will the Unit be a Caravan?

Section 29 (1) of the **Caravan Sites and Control of Development Act 1960** ("The 1960 Act") defines a caravan as "… 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."

This definition was modified by Section 13(1) of the **Caravan Sites Act 1968** ("The 1968 Act"), which deals with **twin-unit caravans**. Section 13 (1) permits with the definition:

"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 not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be moved on a highway when assembled."

Section 13(2) of the 1968 Act further prescribes the following maximum dimensions for twin-unit caravans:

a) length (exclusive of any drawbar); 60 feet (18.288 metres);
b) width: 20 feet (6.096 metres);
c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): 10 feet (3.048 metres).

The **Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006** has now amended Section 13(2) of the 1968 Act to increase the maximum dimensions of a caravan to:

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).

To be a caravan as so defined three tests must therefore be passed; the 'size test', the 'construction test' and the 'mobility test'. The proposed caravan (although this is yet to be purchased) will pass these tests, and will thus fulfil the statutory definition in every way.

Will the Caravan be sited in the Curtilage of the Dwelling?

The primary dwelling (Harvest Home) and its garden grounds are as edged red on the submitted site plan.

The leading case of **Burdle v Secretary of State for the Environment [1972] 3 All ER 240** sets the test for determining the extent of the planning unit. In summary, it should always be assumed that the unit of occupation is the appropriate planning unit unless and until some small unit can be recognised as the site of activities which amount in some substance to s separate use both physically and functionally. The ***Planning Encyclopaedia*** similarly points out that both physical and functional separation are required before a smaller unit can be identified, since without physical separation there is no smaller physical area which can be identified as a separate unit, and without functional separation the ancillary link remains.

The application site is both physically and functionally a single planning unit. As can be seen in the photographs in Appendix 1 the land in question is laid to lawn and is regularly moved. The site is separated from its neighbours by timber fencing and boundary trees.

Will the Caravan be used for Ancillary Residential Purposes?

With respect to the proposed **use of the land**, the proposed caravan would be occupied by Joan Florence Bruin and Leonnard Bruin, the parents of Jeffery William Bruin, one of the occupiers of Harvest Home. Both Joan and Leonnard are 82, their health is deteriorating, and they are unfortunately not able to live on their own any more. Rather than becoming reliant on Social Services, their son and daughter-in-law wish to become their primary carers, and thus enable them to retain a degree of independence for as long as is

possible. Harvest Home is however only a modest 2-bedroom bungalow. Having considered a number of other options, the family have therefore agreed upon a solution to their immediate needs. This is the provision of an ancillary residential caravan, to be sited within the garden grounds of the property, to provide the additional accommodation that they urgently require.

There is no intention that the caravan will be made available for separate, independent, residential use; the hot and cold water supplies, heating system, and electrical supply would all be shared with the main dwelling house. The caravan will not have its own utility metres or postal address and all bills will be sent to Harvest Home. The provision of all meals, laundry facilities, housekeeping etc. will be shared and the caravan will not be registered a separate unit of occupation with respect to the payment of Council Tax.

Whilst the caravan might therefore be seen as being *capable* of independent occupation, this is not the basis upon which a Certificate is being sought. There will be no physical or functional separation of land, and no separate planning unit will be created. On the basis that at all times the occupation of the caravan will remain ancillary to the primary use of the land, no **material change of use** of land requiring planning permission will take place.

Submitted Evidence

In order to support this line of argument the following documents are submitted alongside the current application:

Document 1 – Transcript of House of Commons Debate (22 November 2005)

This debate, in part, concerned the stationing of caravans belonging to gypsies and travellers within the curtilages of the residential properties that they had purchased. Reference (on page 3) is made to paragraph 29 of former Circular 01/94 (subsequently replaced by Circular 01/06) which stated:

> *"Some kinds of activity will not fall within the definition of 'development' in Section 55 of the 1990 Act, and will not therefore require planning permission. Any gypsy living in a dwellinghouse will not require planning*

permission to use a caravan within the curtilage of the dwellinghouse, provided that the purpose is incidental to the enjoyment of the dwellinghouse as such. A caravan within the curtilage of a dwellinghouse may have a number of ancillary uses for which planning permission would not be required. For example, it could be used for ***additional living accommodation****, provided that it remained part of the same planning unit as the dwellinghouse and the unit remained in single family occupation."*

On page 6 of the transcript, in response to the question, "to what extent would the usage of a caravan fall outside the definition of being incidental to enjoyment of the dwelling house", it was stated that:

"*A caravan is not a building. Stationing one on land is not itself 'operational development' that requires planning permission, although associated works such as the provision of infrastructure and hygiene facilities may well be. Under planning law, householders can park caravans in their gardens or driveways indefinitely, provided that no material change of use of land occurs. However, in certain circumstances, the placing of a caravan on land may change the principal use of that land, which would amount to development in the form of a material change of use of land. It is for that reason that the use of land for an occupied caravan generally requires planning permission. The hon. Lady asked whether adding extra caravans would still be incidental.* ***A householder is entitled to use caravans as extra accommodation without planning permission****, provided that the occupants continue to use the house, for example, the kitchen or bathroom. If, on the other hand, a caravan is there for another purpose not incidental to the enjoyment of the main dwelling, known as the dwelling house - for example, it is inhabited quite separately from, and independently of, the dwelling house - planning permission for change of use of the land would, generally speaking, be required. As it would result in the creation of a new planning unit, such permission may well not be granted in a residential area*."

At a later point in the transcript (on page 8) it is confirmed that examples of ancillary uses could include uses such as storage, home office, **additional sleeping accommodation** and a garden shed. The original transcript can be found at:

http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo051122/debtext/51122-39.htm

Documents 2 and 3 – Homefield Appeal Decision and Costs Decision (12 November 2009)

This appeal concerned a Lawful Development Certificate application to site two caravans on land within a residential curtilage, for use as ancillary accommodation incidental and subordinate to the residential occupation of the main dwellinghouse. In allowing an appeal against the refusal, by West Lancashire Council, to issue a Certificate, the appointed Inspector concluded that:

> "*The evidence for the appellants is that the caravans would be used by the two sons to provide their **sleeping accommodation**, "and for **social purposes** and entertaining friends". The supporting statement goes on to say that "the sons will, as now, take all meals in the main house, use laundry facilities and generally inter-react with their parents in the normal manner associated with family occupancy." As such, I consider the proposal is to use the caravans solely as living accommodation additional to that which exists at Homefield. The stated intention is that the caravans will not be used as independent units of accommodation, but will remain very much part and parcel of the main dwelling. If the caravans were to be used as self-contained living accommodation then it is likely that would amount to a material change of use of the land. But, so long as the caravans are sited within the residential planning unit, and so long as use of the caravans remains ancillary to the main dwelling, **I am satisfied their siting does not result in any material change of use of the land***."

In parallel to submitting their appeal against the refusal to issue a Lawful Development Certificate, the appellants made an application for an award or costs on the grounds that the Council had acted unreasonably. In making a full award in favour of the appellants the appointed Inspector found that by considering the proposal primarily in the context set by the 2008 [General Permitted Development] Order the Council failed to first address whether or not the siting of 2 caravans amounted to **development**.

Document 4 – Braeside Appeal Decision (21 November 2011)

A further appeal decision, again in respect of an application similar to the current submission. As in the Holmefield case, the appointed Inspector concluded that, "having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC for the siting of a mobile home in the curtilage for use as a family annexe ancillary to the main house was not well founded. The appeal will succeed".

Document 5 – 7 Haynes Road Appeal Decision (18 June 2013)

This decision concerns the siting of a "Homelodge" timber built mobile home in the rear garden of a house, to be used as ancillary accommodation for the elderly mother of one of the appellants, in the form of a "granny annex". Having determined that the siting of the mobile home would not constitute operational development, the appointed Inspector concluded that as the proposed use of land would fall within the same use as the remainder of the planning unit there would be no material change of use requiring planning permission.

Document 6 – Sandy Holt Appeal Decision (8 April 2013)

This decision concerns the siting of staff accommodation with the curtilage of a dwellinghouse. The 'mobile home' in question was to provide staff accommodation for persons employed on the site as a chauffeur/handyman and or housekeeper with duties which require the staff to be available at various times of the day and evening. Duties would include chauffeuring, maintaining the family vehicles, maintaining the property itself, overseeing other staff, looking after the pool, providing day-to-day domestic support including cleaning and laundry and assistance in the kitchen. The occupiers of the mobile home would continue with their duties in the house when the family were away and would provide an on-site presence for security purposes.

Here, the appointed Inspector noted that the whole of the appeal site would remain under one ownership and control, and that there would be no functional separation of the main dwelling house use from the mobile home

use. The siting of the mobile home would not, therefore, lead to the creation of a new planning unit. Given the clear functional link between the mobile home and the dwelling, and the ancillary and subordinate nature of the accommodation to be provided, she therefore concluded that the siting of a mobile home for the purposes described would not amount to a material change of use.

Document 7 - Waterworks Cottage Appeal Decision (23 November 2011)

This final case concerned the 'permanence' of a 'mobile home', which was to be placed on padstones and would have been likely to have been attached to services such as water, drainage and electricity (although the precise services were not specified in the application). The appointed Inspector was of the opinion that attachment to services was not the same as physical attachment to the land, as they could easily be disconnected in the event that the mobile home needed to be moved. The placing of the mobile home on padstones, or any other sound and firm surface, was also not, in itself, a building operation as suggested by the Council, notwithstanding that a degree of skill is required in such placement. The Inspector found no support in legislation or case law for such a proposition and concluded that the Council were incorrect in their interpretation of the permanence of the mobile home as an indication of operational development rather than a use of the land.

All of the above appeal decisions conclusively demonstrate that the siting of a caravan, to be used for ancillary purposes, is not to be regarded as operational development, and does not bring about a **material change of use** of the land. Whether or not the caravan is capable of independent occupation is of no relevance; the assessment of whether development is involved can only be made on the basis of how the caravan in question will actually be used.

In order provide further support for the current application reference is also made to the following two appeal decisions, each of which relates to the siting of caravans with the grounds of hotels, for use as ancillary accommodation.

In the first of these the Yorkshire Dales National Park Authority refused to

issue a Lawful Development Certificate for the use of a walled garden, within the grounds of a hotel, for the siting of four guest caravans (PINS reference APP/C9499/X/08/2084644). Each caravan was to be used as overnight **sleeping accommodation** for guests of the hotel. In allowing the appeal the appointed Inspector found that:

> "*The use of the walled garden in the manner proposed would not, of itself, create a new planning unit;* ***there would be no material change of use of the land****. For the reasons given above, and having regard to all other matters raised, I conclude that the Authority's refusal to grant a Certificate of Lawful Use or Development was not well founded and that the appeal should succeed*."

In the second, the Lake District National Park Authority refused to issue a Lawful Development Certificate for the siting of an additional **staff caravan** within the grounds of an established hotel (PINS reference APP/Q9495/X/08/2090411). In an almost identical decision to the above the appointed inspector concluded that:

> "*The provision within the planning unit of a hotel in a rural location of facilities for accommodating staff employed in the running of the hotel is capable of being ancillary to the main use. Their provision in the form of a caravan at the site, as a use of land rather than operational development,* ***could fall within the principle of one ancillary to the hotel use where not providing independent living units****. This was established by the* Restormel *judgement*."

Restormel Borough Council v Secretary of State for the Environment and Rabey [1992] concerned the siting of a staff caravan within the grounds of the Norbury Sands Hotel in Newquay. An Enforcement Notice had been served alleging that there had been a material change of use of land, to a use for the purpose of stationing a caravan. The caravan in question was being used as **ancillary dormitory accommodation** for two waitresses.

In his judgement Forbes J came quite firmly to the view that:

> "*… you had to look at the planning unit; you had to look at the use to*

which that planning unit was being put, and if there was a caravan stationed there, then the Inspector was right in saying that if the use to which the caravan was being put was in fact a use which did not amount to a material change of use, then there was no breach of planning control. It was inappropriate when a caravan was stationed on land for a particular purpose, to look at the stationing of the caravan separately and say that that was something which was development requiring planning permission because it made a material change of use."

He thus did not believe you could decide whether the material change of use had been made until you knew the purpose for which the caravan was to be used, and **whether that purpose fitted in with the existing use of the land**".

Finally, whilst not in respect of the siting of a caravan, reference is also made to **Uttlesford District Council v Secretary of State for the Environment & White [1991]**, one of the leading cases in respect of the use of an existing building within the curtilage of a dwellinghouse, for the provision of ancillary residential accommodation. Here it was concluded by Mr Lionel Read QC (sitting as a deputy judge of the Queen's Bench Division) that a building within the garden of a property could similarly be used as an integral part of the main residential use, without this representing a breach of planning control (i.e. a material change of use). As he noted in his judgement:

"*… the Department's present view is that the use of an existing building in the garden of a dwelling-house for the **provision of additional bedroom accommodation** … merely constitutes an integral part of the main use of the planning unit as a single dwelling-house and, provided that the planning unit remains in single family occupation, **does not therefore involve any material change of use of the land***."

Although the proposed caravan could contain the facilities required for independent living, there will be sufficient linkage between its occupant, and the occupants of the main dwelling, for the two to remain a single planning unit. As was observed in *Uttlesford*:

"*… the elderly relative to be accommodated would have her own bedroom, bathroom and, I assume, lavatory, small kitchen, somewhere to*

*sit and her own front door. To that extent she will be independent from the rest of the family**. I find no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling***."

5. Conclusion

To summarise, the key elements of the current submission are as follows:

- The additional accommodation provided would be within a **caravan** as defined in the 1960 Caravan Sites Act (as amended);
- The caravan would be sited within the residential curtilage of the existing dwelling;
- It would be when sited, and will thereafter remain, a **movable structure**;
- It would not be permanently affixed to the ground and no operational development would take place; only services would be connected;
- The use of the caravan would at all times be **ancillary** to the residential use of the planning unit that is Harvest Home and its garden grounds;
- The occupiers of the caravan would have a close family link with the occupiers of the main house, and the provision of all meals, laundry facilities, domestic storage etc. would be shared with the main house;
- The caravan would not be provided with its own separate curtilage; and
- The caravan would not have a separate postal address, it would share the existing dwelling's utility services, and it will not be registered a separate unit of occupation with respect to the payment of Council Tax.

For these reasons, and having regard to the submitted evidence, it is clear that there would be **no material change in the use** of the planning unit, and thus **no development** as defined by Section 55(1) of the Town and Country Planning Act 1990 would take place. A **Certificate of Lawfulness of Proposed Use or Development**, under the provisions of Section 192 of the 1990 Act, should therefore be able to be timeously issued.

APPENDIX 1







