

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR
DEVELOPMENT UNDER SECTION 192 OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

PARK HOME SITE AT FULNEY LANE NORTH, SPALDING

OUR CLIENT: W&B WILLETT (SALES) LIMITED

LPA: SOUTH HOLLAND DISTRICT COUNCIL

1) INTRODUCTION – THE APPLICATION

- 1.1 This is an application under section 192 of the Town and Country Planning Act 1990 to certify that the proposed use of land for the siting of 18 mobile homes would be lawful. The proposed layout of the 18 mobile homes is shown on the attached plan.
- 1.2 This application is made on the basis that the land already benefits from a certificate of lawful use certifying that the use of the land as a mobile home park for residential occupation is lawful. There are no conditions, limitations or restrictions on the certificate of lawfulness that would prevent an increase in the number of mobile homes on the site.
- 1.3 In granting the certificate of lawfulness in the terms that it did the planning authority recognised that the application site is a single planning unit.

2) BACKGROUND FACTS

- 2.1 W & B Willet (Sales) Ltd (“the Applicants”) purchased land on the west side of Fulney Lane North, Spalding on 2nd February 2014. The site is known as Plots 1-9 Fulney Lane North because it had originally been a mobile home park for 9 mobile homes owned and managed by South Holland District Council. In fact the site had been occupied by 11 mobile homes as one of the plots contained three pitches. The use of the land for 11 mobile homes for residential purposes was accepted by the Council’s planning department.
- 2.2 The lawfulness of the existing use as a mobile home park was recognised by virtue of a certificate of lawfulness of existing use which was granted by the Council to itself on 21st October 2014 with reference H16-0124-14.

- 2.3 The certificate of lawfulness certified that the use of land edged red on the accompanying plan (known as Plots 1-9 Fulney Lane North, Spalding) for use as a sui generis caravan/mobile home site for permanent residential occupation was lawful having been used as such for more than ten years.
- 2.4 The certificate of lawfulness does not specify that the use of the land for 9 mobile homes is lawful. Nor does it specify that the use of land for 11 mobile homes is lawful. Indeed it places no restriction or limitation on the number of mobile homes that can lawfully be sited on the land.
- 2.5 The land is shown edged red and the red edging goes around the whole site. It does not go around the individual nine "plots".

3) CERTIFICATE OF LAWFULNESS UNDER S.191

- 3.1 When Local Planning Authorities grant certificates of lawfulness they must draft the certificates so that they are precise and unambiguous. This avoids the need for Applicants/LPAs/Inspectors/the Courts to look behind the certificate to try to interpret it. The Department for Communities and Local Government issued advice in circular 10/97 (now cancelled but still to be accorded weight) which is extremely useful for both Local Planning Authorities and Applicants.
- 3.2 Of most relevance are paragraphs 8.16 and 8.17 which are set out below (underlining our emphasis):

The content of a LDC under section 191

8.16 *Subsection (5) of section 191 provides for certain matters a LDC must contain. The LDC is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the certificate indicates precisely the area of land to which it relates (normally by means of an attached, scaled site-plan); precise details of what use, operations or failure to comply with a condition are found to be lawful, why, and when. For example, if a certificate is for a use of land -unless the use falls within one of the "use classes" specified in the UCO current at the time, or the certificate is granted on the basis that a specific grant of planning permission confers, lawfulness on the use it is important for it to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the LPA may then take enforcement action against that subsequent breach of planning control (which a less precise certificate might well preclude).*

A LDC must therefore be precisely drafted in all respects. (See also 8.11 about the need for applications to be specific.)

8.17 *By virtue of section 191(S)(b), a LDC must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a "use class" of the UCO. But where within a "use class", a LDC must also specify the relevant "class". In all cases the description must be more than simply a title or label, if future interpretational problems are to be avoided. The LDC should therefore state the characteristics of the matter so as to define it unambiguously. This is particularly important for uses which do not fall within any "use class" (that is, a "sui generis" use). So for example a LDC for a caravan site might typically include the number and type or size of caravan found to be lawful at the application date and, where the use is seasonal, the calendar dates on which the use then took place.*

- 3.3 The section on Lawful Development Certificates within the **National Planning Policy Guidance** contains similar guidance to Circular 10/97. For ease of reference I have copied it below:

What must a lawful development certificate include?

Details of what must be included in each type of lawful development certificate can be found in [section 191\(5\)](#) or [192\(3\)](#) of the Act. The prescribed form can be found in [Schedule 8](#) to the Town and Country Planning (Development Management Procedure) (England) Order 2015. Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "sui generis" use); and*

- *where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.*

- 3.4 Had South Holland District Council wanted to restrict the number of mobile homes on the site to 9 (or to 11) it could have specified in the certificate of lawfulness that the use of land as a mobile home park for up to 9 (or 11) mobile homes was lawful. Although this would not have had the effect of a condition in the context of a planning consent, it would have been a benchmark against which to assess whether an increase in the number of mobile homes would result in a material change of use of the land. The Council put no such restriction in the wording of the certificate of lawfulness and so cannot now seek to restrict the numbers on the park by insisting on the submission of a planning application to increase the numbers.
- 3.5 The land is clearly marked on a plan, edged red, attached to the certificate of lawfulness. The red line goes around the whole of the site, indicating that the land is one planning unit rather than nine separate planning units. The reference to plots 1-9 is simply a historical reference to the 9 pitches that had originally been sited on the land. It does not indicate that the lawful use is for only nine mobile homes because otherwise the Council would not have permitted a further two units on "plot 9". It is clear from the aerial photograph submitted in evidence in application H16-0124-14 that the whole of the site was in use as a "caravan site" as defined in the section 1(4) of the Caravan Sites and Control of Development Act 1960. It is defined as "*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*". The land which is not actually developed for caravans is clearly used "in conjunction" with the land that is and so there can be no doubt that the red line correctly identified the site and the planning unit.
- 3.6 There would be no material change of use of the planning unit to site an additional 7 mobile homes (taking the number from 11 to 18) as the character of the use would not materially change.

4) OTHER EVIDENCE IN SUPPORT OF THIS APPLICATION

- 4.1 The email from Ms Lyn Harvey, Private Sector Housing Officer, to Martin Taylor of GVA (the Applicants' planning consultant) dated 5 August 2015 states "*A meeting between our legal services, planning, housing management and our team took place earlier in the year after my visit to the site just after Mr Willett purchased it. The conclusion was that I could issue a licence for 11 units and Planning Permission would need to be sought before more could be added.*" The Council's decision to allow the site to be licensed for 11 units demonstrates that the reference to "Plots 1-9" in the certificate of lawfulness has not been included to act as a limitation on the certificate. If that were the case then the Applicants would not have been able

to have the extra two units. The fact is that "Plots 1-9" refers to the historic name of the mobile home park from when it was first divided into plots for 9 pitches.

- 4.2 From the Council's own evidence (Supporting Evidence date stamped 12 February 2014 and the Planning officer's delegated report), the Planning department accepted in 1992 that *"the above site (Fulney Lane Caravan Site) has an established use as a mobile/static home site and, therefore, Planning Permission will not be required for the proposed scheme to provide three mobile homes....."* The Council clearly considered in 1992 that as the land was an existing mobile home park, it would not amount to a material change of use if the Council were to increase the number of mobile homes on the park. For the Council to now argue otherwise would be perverse.

5) CASE LAW

- 5.1 In the case of *R(on the application of North Wiltshire District Council) v Cotswold District Council* [2009] All ER (D) 258 (Jun), a lawful development certificate was granted for "general aviation purposes". An application was made to seek Judicial Review of this decision but the Court dismissed the application holding that the lawful development certificate was lawful despite being so widely drafted. However, the effect of this certificate was to allow the mixed aviation uses at the airfield to intensify without restriction. The Council would only be able to take enforcement action against uses which didn't fall within the definition of "general aviation purposes".
- 5.2 The description of the use in the certificate of lawfulness for Fulney Lane North is similarly wide and accordingly, there will not be a material change of use requiring planning permission to intensify the existing use as proposed.

6 CONCLUSION

- 6.1 South Holland District Council has already granted a certificate of lawfulness for existing use as a residential mobile home park. The Council accepted the whole of the site was a caravan site as defined and did not seek to limit the numbers. Accordingly it should not now try to claim that planning permission would be required to increase the numbers of mobile homes on the park. Indeed in its own supporting evidence the Council accepted that as it was an existing mobile home park planning permission was not required to site further mobile homes.

TOZERS LLP

On behalf of the Applicants

10 September 2015