



**STATEMENT IN SUPPORT OF THE CERTIFICATE OF EXISTING LAWFUL
USE OF LAND, AS PERMANENT RESIDENTIAL OCCUPATION**

**WOODLANDS CARAVAN PARK, JEKILS BANK, MOULTON EAUGATE,
SPALDING, PE12 0SX**

APPLICANT: MR S SMITH



Introduction

ReSolve Planning has been instructed to produce this statement in support of the Certificate of Lawfulness of Existing Use or Development (CLEUD) in order to confirm *‘the material change of use of the land edged red on the site location plan, has been used in permanent residential occupation for in excess of 10 years’* at Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding, PE12 0SX.

Layout of the Statement

The statement will be structured as follows:-

- Site and Surrounding Context
- Planning History
- Relevant Legislation and Case Law
- Background
- Supporting Evidence
- Appraisal
- Summary and Conclusion

Appendices

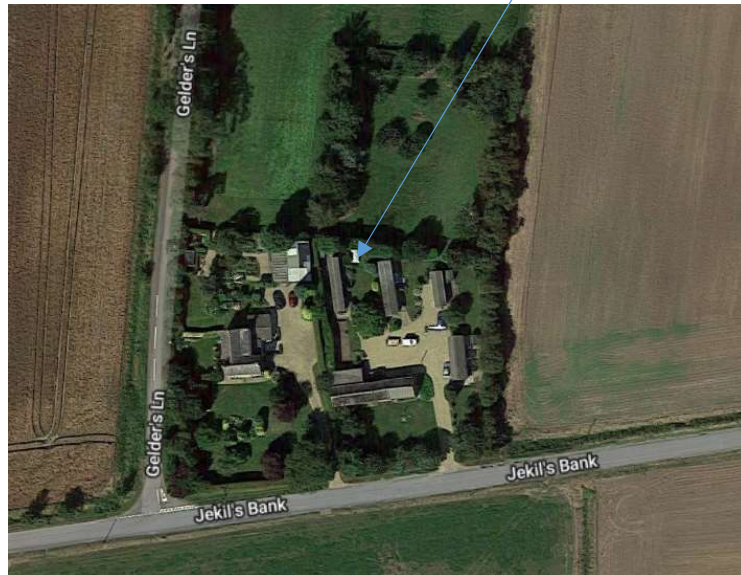
Appendix 1: Witness Statement Mr Malcolm Pacey

Appendix 2: Witness Statement Mr John Mitchell

Appendix 3: Witness Statement Mr Robert Hand

Site and Surrounding Context

The site is within the established Woodlands Caravan Park, accessed via Jekils Bank. The land subject of this application is sited between Plots 1 and 2.



Planning History

Reference H23-0891- 16 for the “Use of Caravans 1,3 and 4 for residential occupation” on the wider site at Woodlands Caravan Park, Jekils Bank, Moulton Eaugate, Spalding, PE12 0SX was approved by South Holland District Council on 7 November 2016.

The Council considered that on the balance of probabilities, Caravans 1,3 and 4 had been used for residential purposes, in breach of condition for a period exceeding 10 years, and the use had therefore become immune from planning enforcement.

Relevant Legislation and Case Law

A Certificate of Lawfulness of Existing Use or Development (CLEUD) is required to establish the lawful existing use of the land, outlined in red on the submitted site plan as a site for permanent residential occupation.

This application is made in relation to Section 191(2) of the Town and Country Planning Act 1990 as it is considered that the independent residential use in question has continued in excess of, and uninterrupted for more than 10 years.

The supporting information provides evidence to demonstrate that on the balance of probabilities the independent residential use of the building has been carried out continuously and without interruption for more than ten years and as such has become lawful.

Statutory Framework

The TCPA 1990 provides at section 191, in so far as is relevant:

191. – Certificate of lawfulness of existing use of development

If any person wishes to ascertain whether –

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful;
or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

He may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if-

no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use... they shall issue a certificate to that effect; and in any other case they shall refuse the application. [emphasis added]

The Encyclopaedia of Planning Law and Practice (Sweet & Maxwell, Release 189, July 2015) provides the following relevant commentary:

Lawful uses (P191.05)

Lawfulness is now equated with immunity from enforcement action, provided the use or operation does not contravene the requirements of an enforcement notice then in force. Thus, an existing enforcement notice will always prevail; but once a certificate has been granted, it is a conclusive answer to any enforcement notice subsequently issued. Lawfulness is therefore judged by planning criteria, and it is irrelevant that a use may be legal under other legislation.

The requirement of a continuous breach

Some activities are lawful for planning purposes simply because they are not within planning control, such as those which occurred prior to the introduction of comprehensive planning control, those which do not constitute development, or those for planning permission has been granted specifically or by General Permitted Development Order. Other activities assume the status of lawfulness by passage of time. Under ss.171A and 171B, enforcement action may be taken in respect of a breach of planning control only within four years of the occurrence of operational development and change of use to use as a dwelling house, and 10 years in all other cases (such as those involving change of use or breach of condition). If enforcement action is not taken within that time, the activity comprised in the breach of planning control becomes lawful, and may be so certified by a certificate granted under this section. [authors emphasis]

Relevant Case Law

In *Thurrock BC v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 226 the Court of Appeal considered the application of the 10 year immunity period, abandonment and the ability or otherwise to commence enforcement action. The Court did not specifically consider what 10 year period should be taken into account, other than finding that the breach had to be continuing at the time of the application for a CLUED. However, Lord Justice Schieman did find as follows at paragraph 25:

“... I agree with the judge as to the rationale of the immunity provision. If there is a planning objection to the erection of a building the LPA must take enforcement action within 4 years of completion or lose the chance of taking such action. If there is a planning objection to a use which has been instituted without the grant of planning permission then again the LPA must take enforcement action within the appropriate time limit, 10 years in the present case. If the new use continues throughout that period then the LPA have lost their chance. Their position is much the same as that of the landowner who lets the world regularly walk along a path over his land. There comes a time when he has lost his right to object...”

For the reasons discussed below and evidence provided, it is the view that the land in question satisfies the relevant tests and that on the balance of probability has been used as in permanent residential occupation, for a period in excess of ten years.

Background

The land subject of this application, contains a touring caravan, which has been occupied as an independent residence, from January 2008. From this point and continually up until the present day the land has been occupied by Mr Malcolm Pacey as his permanent and sole residence. The area around the building has been maintained.

The touring caravan provides a bedroom/lounge, kitchen area and contains a shower and toilet. It contains all the necessary facilities, in order for it to be occupied as an independent residential unit.

The images below, show the external appearance of the touring caravan and the internal facilities.





Supporting Evidence

In regards to the test to be employed in relation to the consideration of evidence submitted as part of a CLUED application, the court (as illustrated within *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) has held that that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Paragraph 006 (Reference ID: 17c-006-20140306) of the 'Lawful Development Certificates' chapter of the Planning Practice Guidance states in determining an application for a Certificate of Lawfulness of Existing Use or Development;

“if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

The evidence provided within the Witness Statements, included within this supporting statement is considered to be sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability that the land in question has been in permanent residential occupation for in excess of 10 years, and so is lawful.

Summary of Evidence

Three affidavits from: Mr Malcolm Pacey (occupant of caravan), Mr John Mitchell (resident) and Mr Robert Hand (employee) are provided within Appendices 1-3.

Summary and Conclusion

An overview of the site context and wider planning history has been provided. It is evident that the land subject of this certificate has been in permanent, independent residential occupation from January 2008, continually up until the present day. The material change of use of land has occurred since January 2008 and has been used and occupied independently and continuously until the present day. It is clear, based on the evidence provided that the land in question satisfies the relevant tests and that on the balance of probability has been in permanent residential occupation for in excess of 10 years, and so is lawful.

Appendices

Appendix 1: Witness Statement Mr Malcolm Pacey

Appendix 2: Witness Statement Mr John Mitchell

Appendix 3: Witness Statement Mr Robert Hand