

The Planning and Design Bureau

Land-Use Planning and Architecture

24th March 2010

Rochford District Council,
Planning Department,
Council offices,
13-19 South Street,
Rochford,
Essex,
SS4 1BW

Dear Sir or Madam,

**Application for Certificate of Lawful Existing Use or Development
Use Of Land As Domestic Garden and for the Stationing Of a Caravan For Purposes
Ancillary To The Enjoyment Of The Dwellinghouse 'Meadow View'
Land at 'Meadow View', Durham Road, Rochford, Essex, SS4 3AE**

Please find enclosed an application for a *Certificate of Lawful Existing Use or Development*, made under Section 191(1) of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991). This is in respect of the use of land at 'Meadow View' Durham Road, in Rochford as part of the domestic garden and for the stationing of a caravan (mobile home) for purposes ancillary to the dwelling for at least the last 10 years. The application comprises the following documents:

1. Completed 1APP application form;
2. Application fee: cheque in the amount of £335.00 (Halifax cheque No. 100192) ;
3. Site Location Plan - Scale 1:1250;
4. Statutory Declaration of Ian John Hayes, March 2010;
5. Statutory Declaration of Mark Ian Hayes, March 2010;
6. Letter dated 17th March 2010 from Mrs Kay Duncombe of 'West Winds', Durham Road, Rochford, Essex, SS4 3AE;
7. Letter dated 8th March 2010 from Ms Tricia Stanford of Ashingdon Heights Boarding Kennels, Durham Road, Rochford, Essex, SS4 3AE;
8. Letter dated 10th March 2010 from D R Swanson 'Rose Cottage', Durham Road, Rochford, Essex, SS4 3AE;

This letter also forms a part of the application and I would be grateful if the following comments are taken into account when a decision is reached.

THE SITE AND ITS SURROUNDINGS

'Meadow View' is situated on the east side of Durham Road, which is an unmade track and a public footpath, located in a rural area about midway between the eastern edge of Hockley and the western edge of Rochford.

The site contains a three-bedroom detached bungalow called 'Meadow View', centrally located towards the front of the site, with two detached stables to the south east and a small barn further to the south. Vehicular access is via two gated drives off Durham Road, one leading to a parking area to the north of the dwelling and the second to the stables buildings

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via a concrete drive/apron and parking area.

To the north of the largest stables building is situated a mobile home set within a small fenced enclosure containing mown grass, a patio and drying line. The mobile home meets the 2006 Amendment¹ to the legal definition of a 'caravan'. The terms 'mobile home' and 'caravan' are used interchangeably in the accompanying Statutory Declarations, letters and in this statement and refer to a structure as defined in the *Caravan Sites and Control of Development Act 1960* and the *Caravan Sites Act 1968*. The location of the mobile home concerned and the land used together with it for purposes ancillary to the dwelling 'Meadow View' for at least the last 10 years, is edged in red on the accompanying Site Location Plan. To the south of the largest stables building is a second mobile home (caravan) that is the subject of an Enforcement Notice.

Gardens to the bungalow are principally to the front and rear (east and west), with the remainder of the land used for the siting of mobile homes, the grazing of horses and/or is unused. The land within the ownership of the applicant extends to about 0.97 hectare in total and is edged in blue on the accompanying Site Location Plan.

The applicants Mr and Mrs Hayes (senior) purchased the property 'Meadow View' and commenced their occupation of it in 1991 and have lived there continuously ever since.

RELEVANT PLANNING LAW AND GOVERNMENT CIRCULAR GUIDANCE

Section 191(1) of the Town and Country Planning Act 1990 (as amended) provides for anyone to apply to the local planning authority (LPA) for a Lawful Development Certificate (LDC). A Certificate is a statutory document certifying in the case of an application under Section 191(1), the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses are "lawful" at any time no enforcement action may be taken against them and they are not in contravention of any enforcement notice, which is in force.

"Taking enforcement action" is defined in section 171A of the 1990 Act (as amended) as the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

A breach of planning control becomes immune from planning enforcement action if no such action has been taken within certain time-limits. By virtue of section 191 (2) and (3) of the 1990 Act, a breach of planning control which has obtained immunity by the passage of time also becomes "lawful" for planning purposes as explained above.

Section 171B of the 1990 Act (as amended) specifies the time-limits for taking enforcement action. In relation to the use of land such as in this case, section 171B(3) states that "no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

The combined effect of these provisions is that if a development or activity was, on or after 27 July 1992, immune from enforcement action it also became lawful for planning purposes.

¹ The Caravan Sites Act 1968 and Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006

This applies whether or not a LDC has been issued under sections 191 or 192 of the 1990 Act. There is no compulsion to apply for a LDC.

Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

Paragraph 8.12 of Annex 8 to *Circular 10/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements* it is explained that the onus of proof in a LDC application is firmly on the applicant.

Paragraph 8.15 of the Circular advises that in LDC cases the Courts have held that the relevant test of the evidence is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a Certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbitts v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA 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 8.15 of Annex 8 also advises that the LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

THE USE TO WHICH THE APPLICATION RELATES

A CLUED is sought for the use of the land edged in red as part of the domestic garden to the dwelling 'Meadow View' and for the stationing of a mobile home upon it that has been used for purposes ancillary to the use of the dwellinghouse.

THE EXISTING ENFORCEMENT NOTICE

The Enforcement Notice served on 19th October 2009 is concerned with the larger and more recent mobile home that has been sited to the south of the stables building as shown marked with a 'X' the Enforcement Notice plan. It requires cessation of the use of the land for the siting of the mobile home for the purposes of human habitation, the permanent removal of the mobile home, and the reinstatement of the land to its former condition. The applicants will comply with the requirements of the Enforcement Notice in due course.

The Notice did not seek to require removal of the older mobile home, notwithstanding the service of a Planning Contravention Notice in respect of it. It is assumed that the LPA were aware from its own records that the smaller, older mobile home subject of this present application was lawful by virtue of the time it had been sited on the land and that it was not being used as a separate dwelling but for purposes ancillary to the main dwelling 'Meadow View'.

The aim of this application is to distinguish between the two mobile homes and to seek comfort for the applicants through the issue of a CLEUD that the continued retention of the

smaller, older mobile home would be lawful. It does not appear that the LPA has any planning merits or planning law issues with the retention of the subject mobile home.

It is considered that the Enforcement Notice does not relate to the mobile home subject of this application because it quite clearly defines the more recent structure sited in a different location as being its target. In addition, even following the 'Challinor' case law of 2007, rights to use land and buildings ancillary to the primary use of the site (in this case the dwelling 'Meadow View') and not being enforced against remain and are not subject to the Notice.

EVIDENCE

In order to be successful this application must demonstrate, on the balance of probability, two things. Firstly, it must be shown that a mobile home has been in existence on the site continuously since at least 23rd March 2000 (10 years prior to the date of this application). Secondly, it must be shown that the mobile home and its immediately surrounding land has been continuously used for purposes ancillary to the residential use of the dwellinghouse 'Meadow View' for that entire period.

Two Statutory Declarations accompany the application. Ian Hayes and his son Mark explain in these that the existing mobile home was on the site when 'Meadow View' was purchased in 1992 and has remained on site (i.e. within the land edged red) ever since. Although not considered to be necessary in the light of the submitted evidence, the applicants can obtain a Statutory Declaration from the previous owners of 'Meadow View' that the present mobile home was sold to them as part of the wider sale of the dwelling and that it was stationed within the site edged in red at the time of the sale.

A letter from Mrs Kay Duncombe of the adjacent dwelling to the north 'West Winds', who has been familiar with the application site since she was a child in the mid 1960's, also accompanies the application. In this Kay Duncombe confirms that there has been a mobile home on the site for a period in excess of the last 10 years and that *"this has been the case since the property was purchased by the current owners"*. Further, Kay describes her recollection as a small child that *"the neighbours in Meadow View had a caravan in the same place which was used as residential living accommodation for the daughter of the then owners"*.

A further letter from D R Swanson confirms that a caravan has been on the site for the duration of his occupation in 1997, and Tricia Stanford of the adjoining boarding kennels has also written to confirm that she has been aware of a caravan on the site since at least September 2000 when she moved into her dwelling.

I am aware that the LPA has access to historical aerial photography of the District and will no doubt be able to interrogate the record and corroborate the existence of the mobile home for at least the last 10 years. This will also show the small surrounding fenced area used as additional garden by the residents cumulatively living in the mobile home and 'Meadow View'..

Turning now to the use of the mobile home, the two Statutory Declarations, from Ian Hayes and his son Mark, explain how the mobile home provided ancillary bedroom and living accommodation for much of the period 2000 – 2006. However, it is also clear from the Declarations that the mobile home was not used as a separate 'dwelling' because there was a functional relationship between family members and considerable overlap in use of the main house Meadow View to prepare and consume meals, recreate as an extended family etc.

More recently, since 2006, the mobile home has been used to store domestic articles, Christmas presents and 'business from home' records, of Mr and Mrs Hayes senior (residing in 'Meadow View') in addition to still being used as additional bedroom accommodation when relations and friends come to stay. These uses continue to the present day.

The use of the mobile home and the duration of its existence on the application site is also confirmed by the answers provided by the applicant Mr Ian Hayes to a Planning Contravention Notice served by the LPA in July 2009 (known as mobile home in position 'B' in that document).

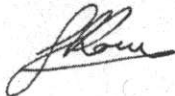
CONCLUSIONS

I have spoken at length to Mr and Mrs Hayes about the existence of the mobile home on site and the uses to which it and the land within the application site have been put over the period of their occupation of 'Meadow View'. I can find no evidence to refute the case made that the mobile home has been in its present location for at least the last 10 years. I can also find no evidence to suggest that it and its surrounding small garden has either been unused or used for purposes unconnected with the dwelling 'Meadow View'.

Should you wish to alter or refine the description of development sought to be recognised as lawful I would be happy to discuss the matter with you.

I would be grateful if you would register the application, provide a receipt for the application fee, and advise me of the case officer and the timetable for determination in due course. If you have any queries regarding the application or wish to discuss any matters please do not hesitate to contact me.

Yours faithfully



Stewart Rowe, Dip TP, MRTPI

Encl. Application for Certificate of Lawful Use - Existing as set out
CC Mr and Mrs Hayes