CASE OFFICER'S REPORT

Application References:	**PL/2023/10545 and PL/2023/10547**
Description	**PL/2023/10545 Mixed use of land for agricultural purposes and the siting of 3 caravans for residential use.** **PL/2023/10547 Use of land for the siting of 1 caravan for residential use with ancillary operational development comprising the erection of a timber cabin.**
Address	**Sunset View Farm and land south of Sunset View Farm, Pitton Road, Pitton, Salisbury, SP5 1EJ**

RELEVANT LEGISLATION AND TIME LIMIT

Section 191 of the Town and Country Planning Act 1990 allows a person to make a formal application for a certificate of lawful existing use ("CLE") to determine 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,

has become lawful through the passage of time and can be continued without the need for planning permission.

(2)For the purposes of this Act uses and operations are lawful at any time if—
(a)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
(b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Obtaining a CLE will have the effect of proving that the development is lawful, and protect the development from enforcement action. The onus is on the applicant to prove the case by supplying sufficient clear and precise evidence to satisfy the Authority that a CLE - the test to be applied to that evidence is the 'balance of probability'. The application is assessed purely on the evidence; the planning merits of the development are irrelevant.

In the case of applications for existing use, 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.

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;

- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- **within 10 years for any other breach of planning control (essentially other changes of use)**

The Levelling-up and Regeneration Act 2023 S115 states:

115 Time limits for enforcement

(1) In section 171B of TCPA 1990 (time limits), in subsection (1), for the words from "four years" to the end substitute—

"(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed."

(2) In that section, in subsection (2), for the words from "four years" to the end substitute—

"(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach."

However, transitional arrangements are in place and The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states**:**

Part 3 Commencement of provisions of the Levelling-up and Regeneration Act 2023
Provisions of the 2023 Act coming into force on 25th April 2024

3. The following provisions of the 2023 Act come into force on 25th April 2024—

(b)section 115 (time limits for enforcement);

Transitional provision: time limits for enforcement

5. The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) **do not apply** where—

(a)in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (**1**) (time limits), the operations were substantially completed, or

(b)in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

The relevant day is 25th April 2024. The applications were valid on 20/12/23, so the new provisions do not apply.

The **Town and Country Planning Act 1990** as amended ("the 1990 Act") **S171B states**

F1 [171B Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

[F2 (2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).]

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The applications are submitted under the provisions of sections 171B(1) – for "*operational development*" and 171B(3) – for *"any other breach of planning control."* The LPA therefore agrees with the applicant that to establish the use of land as a sui generis use for the stationing of caravans for residential purposes, the relevant time period is 10 years. Any operational development associated with the land used for the siting of the caravans would be subject to a 4 year time limit for enforcement action. The breaches therefore relate principally to the use of land for the siting of caravans (which are intended for human occupation) and other associated operational development.

The legal test

It is accepted that the onus of proof is on the applicant, and as confirmed in *F W Gabbitas v SOS & Newham LB* [1985] JPL 630 an applicant's own evidence does not have to be collaborated by independent evidence. PPG Paragraph: 006 Reference ID: 17c-006-20140306:

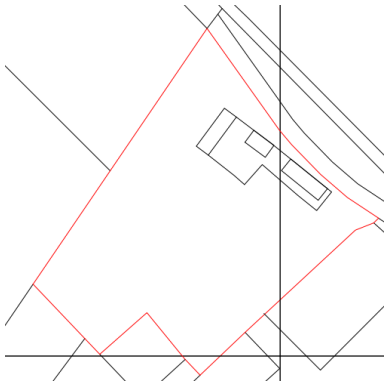
In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is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

SITE HISTORY: None for the application sites. History relates to adjacent plots.

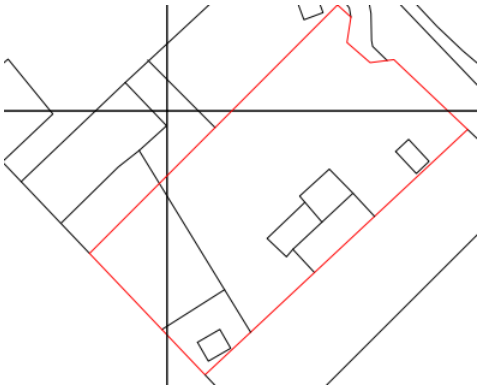
- 20/07366/FUL W/D
- 14/00982/ENF Parking and storage of vehicles unrelated to agriculture Appeal dismissed

APPLICATION DETAILS, SITE AND SURROUNDINGS

PL/2023/10545



PL/2023/10547



Aerial Context Google Maps



The two adjacent sites are located to the east of Pitton Road and both are accessed via an unmade gated track from the road. The aerial photo above from Google 2024 shows the layout of the site and the caravans and other structures positioned upon the land at present. The applications state that a certificate of lawfulness is sought for:

PL/2023/10545 Mixed use of land for agricultural and the siting of 3 caravans for residential use and

PL/2023/10547 Use of land for the siting of 1 caravan for residential use with ancillary operational development comprising the erection of a timber cabin

The supporting statements clarify that the applications seek:

a legal declaration that the subject land has been used for the stationing of up to 3no caravans for residential purposes for a period in excess of ten years such that it is now lawful and therefore immune from enforcement proceedings.

a legal declaration that the subject land has been used for the stationing of 1no caravan for residential use and associated ancillary activities for a period in excess of ten years such that it is now lawful and therefore immune from enforcement proceedings.

CONSULTATION RESPONSES:

Parish Council: Object

The Parish resolved to object to this application on the grounds of it being residential application for an area outside a housing policy boundary and on agricultural land. There was no agricultural reason for the residence being required. There seem to be 2 different numbered planning applications for this area of land. We would like to object to both as a Parish Council. The Parish resolved in it's meeting on 3rd Jan 2024 to object to this application on the grounds of it being residential application for an area outside a housing policy boundary and on agricultural land. There was no agricultural reason for the residence being required.

Third Parties: none received

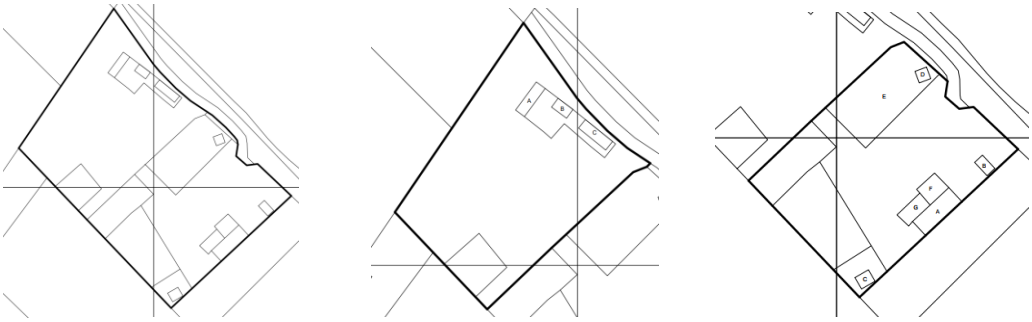
CONSIDERATION OF EVIDENCE

1. **Evidence submitted in support of the applications:**

PL/2023/10545
Drawing 1 Location Plan and Drawing 2 - Block Plan
Covering Letter by S Jupp dated Monday, 04 December 2023
Statutory declaration of Danny Cartwright dated 8th November 2023
DC1 - black line around north and south site areas
DC2 – Aerial photos 1999, 2001, 2003, 2005, 2017
DC3 – black line site plan for north area
DC4 – caravan photos
DC5 – Letter Aug 2023 - supplied gas since 1998
DC6 – site plan for south section and structure refs A-G
DC7 – letter confirming mobile sold to applicant 15/10/2010 and receipt for mobile home 18/10/2010
DC8 - Letter Aug 2023 confirming Klargester cesspit installed 10 years
DC9 – Email from SSE applicant has been electricity customer since 2004
DC10 – SSE bill for Sunset View Farm Pitton 3 June 2009, 26 Nov 2010, 28 Feb 2013, 9 June 2023
DC11- Atlanta log cabin receipt 23 April 2018
DC12 – Photos of clad caravan and decking, lorry, log cabin, wendy house & children's play area
4 letters of supporting evidence: J Cartwright, M Cartwright, Dr J & Mrs Hurst and Mr & Mrs D Hurst

PL/2023/10547
Drawing 13 - Site Plan Drawing 11- Location Plan and Drawing 12 - Block Plan
Covering Letter by S Jupp dated Tuesday, 19 December 2023
Statutory declaration of Danny Cartwright dated 8th November 2023
DC1 - black line around north and south site areas
DC2 – Aerial photos 1999, 2001, 2003, 2005, 2017
DC3 – black line site plan for north area
DC4 – caravan photos
DC5 – Letter Aug 2023 - supplied gas since 1998
DC6 – site plan for south section and structure refs A-G
DC7 – letter confirming mobile sold to applicant 15/10/2010 and receipt for mobile home 18/10/2010
DC8 - Letter Aug 2023 confirming Klargester cesspit installed 10 years
DC9 – Email from SSE applicant has been electricity customer since 2004
DC10 – SSE bill for Sunset View Farm Pitton 3 June 2009, 26 Nov 2010, 28 Feb 2013, 9 June 2023
DC11- Atlanta log cabin receipt 23 April 2018
DC12 – Photos of clad caravan and decking, lorry, log cabin, wendy house & children's play area
4 letters of supporting evidence: J Cartwright, M Cartwright, Dr J & Mrs Hurst and Mr & Mrs D Hurst

ii) The statutory declaration by D Cartwright dated 8/11/23



The northern part of the site [edged with a thick black line on the plan at DC3] has historically had 3no caravans on it – 2 statics and one tourer. These are clearly evident in the Google Earth aerial photographs that I attach at DC2. These date from 1999, 2001, 2003, 2005, 2017, 2020 and 2021. The northernmost caravan [labelled A on the plan at DC3] was the original caravan which was lived by my wife's parents, John and Gwen Attrill, as they operated a smallholding and stayed there every weekend from Friday to Monday. The tourer [labelled B] and additional static [labelled C] were then added by family members, including my wife and I, who stayed in them for holiday purposes, generally most weekends from Friday to Sunday and the occasional 1 or 2 week stay. This use continues today although the southern static has now been replaced with a tourer and the land continues to be used for stationing of 3 caravans for residential purposes.

There is an electric supply and meter on the eastern end of the southern face of the current [green] caravan in the position of the original caravan [this is the second replacement caravan in that position] as evident in photograph 2 at DC4. There is also a historic water supply and foul drainage is dealt with through the use of portaloos which were originally disposed of in the buildings adjacent to Pitton Road but since 2010 have been emptied into my Klargester. Gas bottles have been supplied by Hire-It when I have requested them and a letter dated 15 August 2023 [attached at DC5] confirms the delivery of 15kg Butane and 47kg Propane bottles since 1998.

In 2010 the land was split between the family members following the death of Maria's mum in 2009 and I took sole possession of the land immediately to the south of the historic caravan land and to the north of the woodland belt. This land is edged with a thick black line on the plan attached at DC6. At that time the land to the south of the woodland belt continued in shared ownership with my sister as did the original caravan site land.

On 15th October 2010 I purchased a mobile home from Mr Nightingale of 135 Rownhams Lane, North Baddesley and the receipt is attached at DC7. Also attached at DC7 is an invoice dated 18th October 2010 for the delivery of the mobile. It is stated to be a 30ft x 10ft mobile which is what I have on site in the position marked A on the plan at DC6. Shortly after its delivery I placed a Luton lorry back to the east side of my caravan [marked B] which as always been used for storage purposes. In around 2012 I had a Klargester installed. In this regard I attach at DC8 a letter from A.H. Willis & Sons confirming that they installed the tank for me between 10 and 11 years ago.

The two sites have had an electric supply for a long time and SSE have confirmed in an email dated 13 July 2023 [attached at DC9] that I have being paying the bills since 2004 which they clarify is as far back as their records go. I have found some old bills and I attach those at DC10, which were originally in my father in laws name, then joint with me and then in my sole name.

On 23 April 2018 my son, Jamie Cartwright, purchased a log cabin [as confirmed in the invoice at DC11] and in either May or June 2018 we constructed is in the south west corner of the land, annotated C at DC6 and photo 3 at DC12. Jamie bought this as his family wanted their own building to stay in at weekends and occasional weeks rather than share the static with my wife and I. More recently Jamie has purchased a wendy house [annotated as D at DC6 and photo 4 at DC12] and this is located within a scalpings area [annotated as F at DC6 and photo 5 at DC12] that my grandchildren use.

At around the same time I erected raised decking to the front of the static caravan [decking annotated as E] and hardsurface [F at DC6] which are visible on the 2020 aerial photograph and in photograph 1 at DC12. At the same time as doing the decking I clad the faces of the static caravan with timber in order to give it a matching countryside appearance.

On the basis of the foregoing, I confirm that the northern parcel of land as edged with a thick black line on the plan at DC has been continuously used for the stationing of 3 residential caravans. All caravans have been used only for residential purposes with my parents occupying the northern static most weekends from Friday to Monday. The other caravans were used by family members from Friday to Sunday but not every weekend and there were occasional stays of 1 to 2 weeks. I accept that since 2010 the land to the south was separated from this area but this, northern, area which has been separated from the southern area by fencing since 2010, has continued to be used for the siting of 3 caravans for residential purposes.

As to my land parcel indicated at DC6 this has been used for the stationing of a residential caravan and ancillary uses 2010. The caravan has been the primary living accommodation on my parcel of land and has been more recently supplemented by my son's timber cabin. The wendy house has been used as part of a wider play area for our grandchildren. I consider that my land has been used since 2010 for the stationing of a residential caravan with associated ancillary uses. Whilst we may not continually live on the land there has always been a caravan on the land and it has always been available, and only so used, for residential purposes.

iii) the supporting statement from the applicant's agent for PL/2023/10545

The applicant, Mr D Cartwright, has provided a sworn declaration, supported by some documentary evidence along with numerous aerial photographs.

The background, as set out in paragraphs 3 to 4 of the Declaration of Mr Cartwright is that the northern part of the site [edged with a thick black line on the plan at his DC3] has historically had 3no caravans on it – 2 statics and one tourer. These are clearly evident in the Google Earth aerial photographs that he attaches at DC2. These date from 1999, 2001, 2003, 2005, 2017, 2020 and 2021.

The northernmost caravan [labelled A on the plan at his DC3] was the original caravan which was lived by his wife's parents, John and Gwen Attrill, as they operated a smallholding and stayed there every weekend from Friday to Monday. The tourer [labelled B] and additional static [labelled C] were then added by members of his family, including him and his wife, who stayed in them for holiday purposes, generally most weekends from Friday to Sunday and the occasional 1 or 2 week stay.

He confirms that this use continues today although the southern static has now been replaced with a tourer and the land continues to be used for stationing of 3 caravans for residential purposes. At no stage has the use been abandoned. There is also an electric supply and meter on the eastern end of the southern face of the current [green] caravan in the position of the original caravan [this is the second replacement caravan in that position] as evident in photograph 2 at his DC4. There is also a historic water supply and foul drainage is dealt with through the use of portaloos which were originally disposed of in the buildings adjacent to Pitton Road but since 2010 have been emptied into his Klargester which is sited on his plot to the south.

Gas bottles – for use for heating and cooking - have been supplied by Hire-It when he has requested them and a letter dated 15 August 2023 [attached at his DC5] confirms the delivery of 15kg Butane and 47kg Propane bottles since 1998.

He then concludes, on this site at paragraph 10, that the northern parcel of land has been continuously used for the stationing of 3 residential caravans. All caravans have been used only for residential purposes with his parents occupying the northern static most weekends from Friday to Monday. The other caravans were used by family members from Friday to Sunday but not every weekend and there were occasional stays of 1 to 2 weeks. He accepts that since 2010 the land to the south was separated from this area but this, northern, area which has been separated from the southern area by fencing since 2010, has continued to be used for the siting of 3 caravans for residential purposes.

iv) the supporting statement from the applicant's agent for PL/2023/10547

The applicant, Mr D Cartwright, has provided a sworn declaration, supported by some documentary evidence along with numerous aerial photographs.

The background, as set out in paragraphs 5 to 11 of the Declaration of Mr Cartwright, is that in 2010 the land was split between the family members following the death of his wife's mum in 2009 and he took sole possession of the land immediately to the south of the historic caravan land [subject to a tandem application for a certificate of lawfulness for up to 3no caravans] and to the north

of the woodland belt. At that time the land to the south of the woodland belt continued in shared ownership with his sister as did the original caravan site land.

On 15th October 2010 Mr Cartwright purchased a mobile home from Mr Nightingale of 135 Rownhams Lane, North Baddesley and the receipt is attached at DC7 to his Declaration. Also attached at DC7 is an invoice dated 18th October 2010 for the delivery of the mobile. It is stated to be a 30ft x 10ft mobile which is what he has on site in the position marked A on Drawing 13. Shortly after its delivery he also placed a Luton lorry back to the east side of his caravan [marked B] which has always been used for storage purposes.

In around 2012 he had a Klargester installed and at DC8 there is a letter from A.H. Willis & Sons confirming that they installed the tank for him between 10 and 11 years ago.

The two sites have had an electric supply for a long time and SSE have confirmed in an email dated 13 July 2023 [attached at DC9] that he has being paying the bills since 2004 which they clarify is as far back as their records go. He has also found some old bills and those are attached at his DC10, which were originally his father in-laws name, then joint with him and then in his sole name.

On 23 April 2018 his son, Jamie Cartwright, purchased a log cabin [as confirmed in the invoice at DC11] and in either May or June 2018 they constructed it in the south west corner of the land, annotated C on Drawing 13 and photo 3 at DC12. Jamie bought this as his family wanted their own building to stay in at weekends and occasional weeks rather than share the static with His parents. More recently Jamie has purchased a wendy house [annotated as D on Drawing 13 and photo 4 at DC12] and this is located within a scalpings area [annotated as F on Drawing 13 and photo 5 at DC12] that my grandchildren use.

At around the same time the applicant erected raised decking to the front of the static caravan [decking annotated as E] and hardsurface [F on Drawing 13] which are visible on the 2020 aerial photograph and in photograph 1 at DC12. At the same time as doing the decking he clad the faces of the static caravan with timber in order to give it a matching countryside appearance.

On the basis of the foregoing, he confirms that his land parcel, the subject of this application, has been used for the stationing of a residential caravan and ancillary uses 18th October 2010. The caravan has been the primary living accommodation on his parcel of land and has been more recently supplemented by his son's timber cabin. The wendy house has been used as part of a wider play area for his grandchildren. Whilst they do not continually live on the land there has always been a caravan on the land and it has always been available, and only so used, for residential purposes.

v) Aerial photos and mapping records in year order



Stat dec aerial 1999



LPA 2001



Stat dec aerial 2003

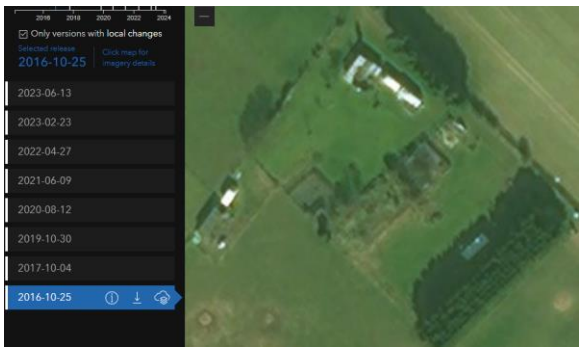


Stat dec aerial 2005

In 2010, the site is allegedly split. No photo is available until 2014.



LPA 2014



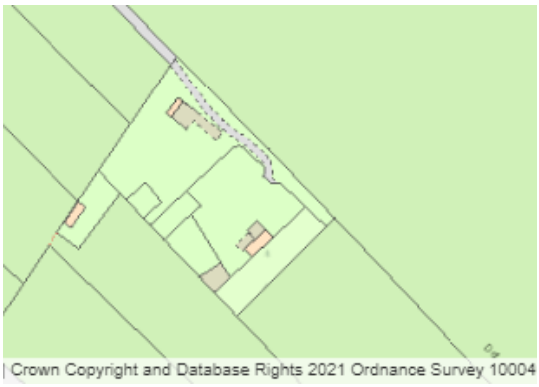
LPA March 9th 2014



Stat dec aerial 2017



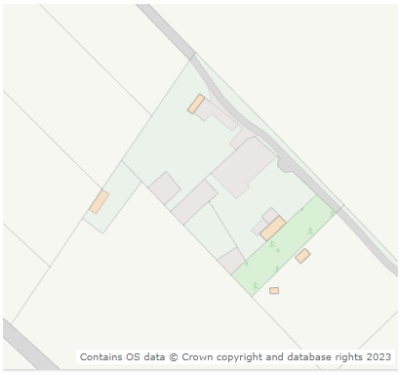
LPA 16 Sept 2020



2021 OS Mapping



LPA 6 Sept 2021



2023 OS Mapping



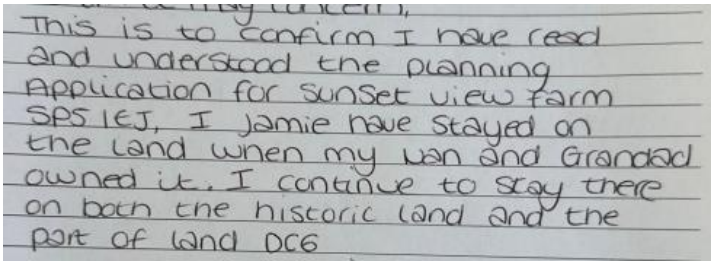
LPA 2023



Google Maps 2024

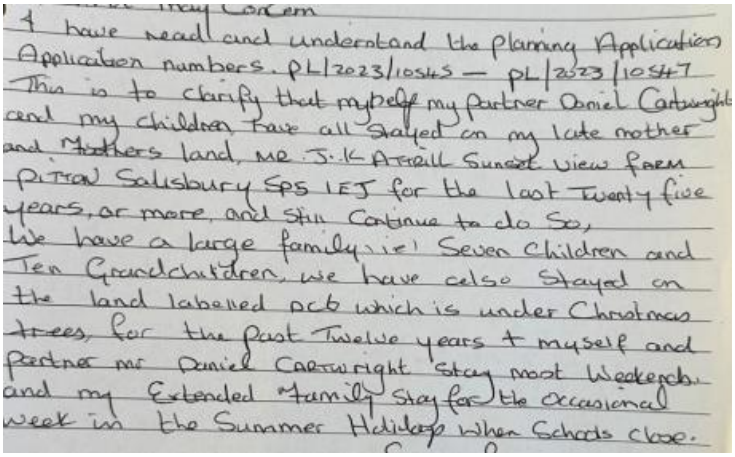
vi) 4 letters of supporting evidence:

Mr J Cartwright



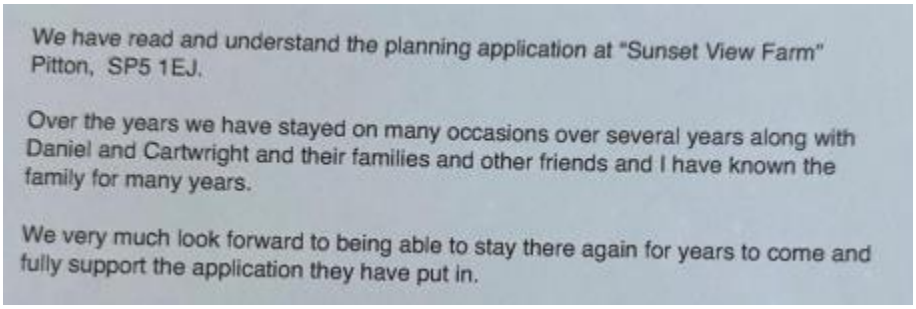
This is to confirm I have read and understood the planning Application for Sunset view farm SP5 1EJ, I Jamie have stayed on the land when my Nan and Grandad owned it. I continue to stay there on both the historic land and the part of land DC6

Mrs M Cartwright



I have read and understand the planning Application Application numbers. PL/2023/10545 — PL/2023/10547 This is to clarify that myself my partner Daniel Cartwright and my children have all stayed on my late mother and Mothers land, Mr J.K Attrill Sunset View Farm Pitton Salisbury SP5 1EJ for the last Twenty five years, or more, and still Continue to do So, We have a large family, ie! Seven Children and Ten Grandchildren. We have also Stayed on the land labelled DC6 which is under Christmas trees, for the Past Twelve years + myself and partner Mr Daniel Cartwright Stay most Weekends and my Extended family stay for the occasional week in the Summer Holidays when Schools close.

Dr J & Mrs Hurst

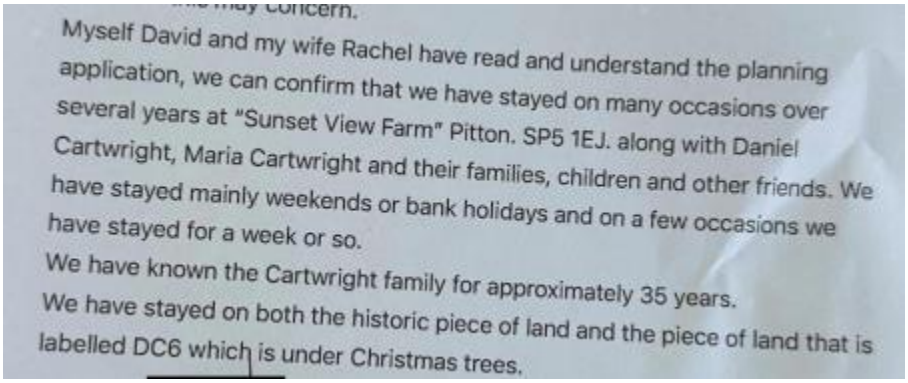


We have read and understand the planning application at "Sunset View Farm" Pitton, SP5 1EJ.

Over the years we have stayed on many occasions over several years along with Daniel and Cartwright and their families and other friends and I have known the family for many years.

We very much look forward to being able to stay there again for years to come and fully support the application they have put in.

Mr & Mrs D Hurst



Myself David and my wife Rachel have read and understand the planning application, we can confirm that we have stayed on many occasions over several years at "Sunset View Farm" Pitton. SP5 1EJ. along with Daniel Cartwright, Maria Cartwright and their families, children and other friends. We have stayed mainly weekends or bank holidays and on a few occasions we have stayed for a week or so.

We have known the Cartwright family for approximately 35 years.

We have stayed on both the historic piece of land and the piece of land that is labelled DC6 which is under Christmas trees.

iv) Photos and site visit notes dated 20/2/24 - Please refer to case file photos.

2) Evidence against the applications:

- The applicant's own evidence states that the residential *occupation* of the caravans has not been continuous over the ten year period. However, the use of the land for the "siting" of caravans is not dependant on the occupation of the caravans and this matter should not be conflated.

- Not all the items labelled on the submitted plans can be evidenced for the required four or ten years on the available aerial photos and the applicant has provided explanations in their stat dec. Some items have been excldued from the red line block plans

- Site visit evidence that parts of the land are for the keeping of livestock and used as fields / grazing and are not directly or clearly related to the caravan use. The applications have been updated to exclude these areas under S193 (4) which states:

193 (4)A certificate under either of those sections may be issued—

(a)for the whole or part of the land specified in the application; and

(b)where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

ANALYSIS OF THE EVIDENCE

i) Use of land for the stationing of caravans

A caravan site is defined in the 1960 Act as amended 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.

A caravan is defined in the 1960 Act S29 as:

"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,

Holiday and residential *buildings* normally fall within the same C3 use class. However, a caravan site does not fall within any use class as defined in the Use Classes Order and the courts have established that a caravan cannot be a "building*."*

In terms of the use class, when consideration is given to the *stationing* of caravans, whether that be for holiday or residential occupancy, it is the use of land that is being considered for rather than the structures themselves. Land being used for the siting of caravans is considered to fall under the sui generis use class.

In these CLE applications, certificates are being sought for the lawful use of land for the stationing of caravans for residential use and associated ancillary activities. By legal definition, the caravans are designed for human habitation and so it is the use of land that is the principal consideration, and not the residential use of the caravans.

ii) Continuous use of land for the siting of the caravans for 10 years

The applicant has set out the considerations for the sites in their evidence, including provision of electric bills, drainage provision, installation of the log cabin and aerial photos. The evidence of *occupation* is not continuous for the ten year period but the *siting* and presence of the four caravans on the two land parcels for the required 10 years has been sufficiently evidenced on the balance of probabilities for the required time limit of 10 years.

Therefore, there are two main issues for consideration by the LPA:

i) The use of the land for the stationing of static /touring caravans for a continuous period of 10 years and associated operation development for a continuous period 4 years.

ii) The planning units (the area of land) for the certificates.

On point (i), the LPA can be satisfied that the applicant has submitted sufficient evidence to demonstrate clearly and unambiguously, that the static and touring caravans shown on the submitted plans have been sited on the land in excess of 10 years. The aerial mapping and photos provide convincing evidence for the northern site. DC7 is an invoice dated 18th October 2010 for the delivery of the mobile caravan A on the south site and this accounts for the small gap in the available aerial photography which shows caravan A in place from 2014.

It is acknowledged from the case law supplied by the applicant that *continuous physical occupation is not required for there to be an established use of the land for the stationing of the caravans.* The LPA has no contrary evidence.

Point (ii) considers the planning units. The case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:

> *a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;*
>
> *b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;*
>
> *c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.*

Points (a) and (b) are probable for both sites, as a direct result of how they have evolved over time from a previously agricultural/grazing use and character. Both sites include expanses of mown grass.

Therefore, for a decision maker to conclude that there is a smaller area for the planning unit, it should be physically or functionally distinct from the rest of the land. In respect of both sites there have apparently never been any physical features to separate the areas within the wider areas edged red on the amended block plans. These areas exclude small enclosures for animals that are present on the site and the play area with scalping surface on the southern site. It can therefore be concluded that other areas within the red line laid to mown grass are NOT physically or functionally separate, on the balance of probabilities given the available evidence.

The applicant has submitted details in the statutory declaration for the lettered areas shown on the stat dec plans. A site visit by the case officer with the enforcement officer has also provided clarification for the use of the sites.

The aerial photos from 2001, 2003 and 2005 show agricultural activities but such uses are not readily apparent post 2010 when the land was split. The 2017 aerial shows no agricultural activities and the overgrown area which had the poly tunnel and other features on it has been removed from the application for the south site. The 2017 photo indicates the start of the remainder of the land forming the southern site as a single planning unit. The evidence in the stat decs does not indicate any agricultural use throughout the relevant ten year period and the aerials support this. The site visit photos show the area to the front of the log cabin as mown grass.

The evidence also supports the fact that the remainder of the land was likely to have been used for purposes incidental to the primary use of the land for the stationing of 3 caravans [in the case of the Northern parcel] and 1 caravan [for the southern parcel] and does not apparently form separate planning units.

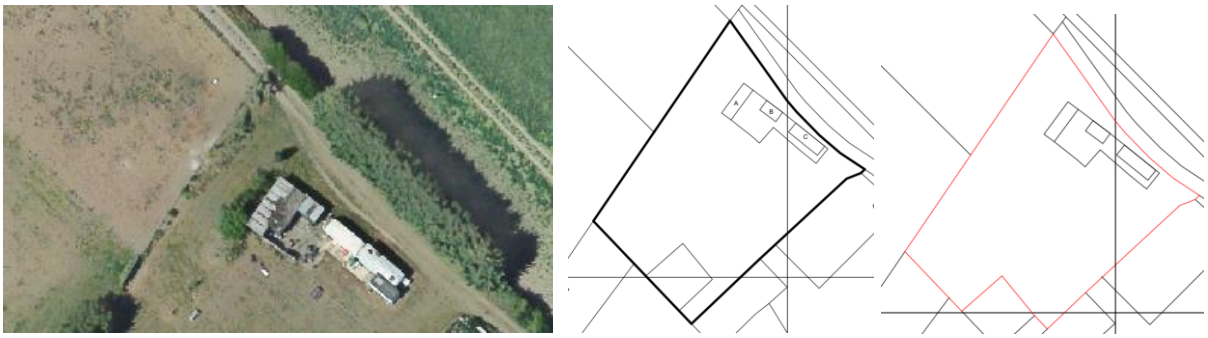
When considering a breach of planning control for the sites, it is necessary to look at the unit of occupation - the planning unit when dealing with a change of use. This is different to curtilage - which is defined as a space around a building. These applications are not seeking CLEs for buildings but a *use of land*. There may also be a variety of ancillary or incidental uses centred around the primary use of the land for the siting of the residential caravans. When dealing with a use, there are ancillary operational developments which could be undertaken provided they are ancillary to the primary use. The classic example relates to the case of *Murfitt* where a Notice was issued in respect of the issue of land for parking cars and the operational development was ancillary to it.

If there was sufficient evidence to show that there has been an agriculture use on part of the parcels edged red then it is likely that this use was in connection with the residential use**.** The north site description reflects this mixed character.

North site area PL/2023/10545

For PL/2023/10545, the 10 year presence of A (static caravan), B (touring caravan) and C (static caravan) is sufficiently and satisfactorily evidenced by the stat dec and the aerial photos from 1999.

The flag stone hard standing shown on the plans is also evidenced by the 2014 mapping held by the Council and noted during the site visit:



and on the balance of probabilities from the aerial photos, it is likely that the flag stones or other form of hardstanding has been in place for the required 4 year time period. The *remainder* of the land within the red line appears to be used and managed as mown grass and excludes a poultry enclosure in the southern portion.

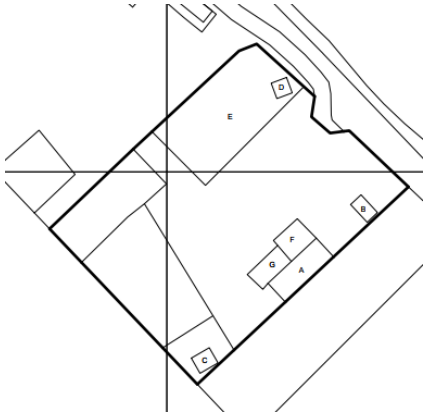
In conclusion, a certificate of lawfulness may be issued for the area occupied by the hardstanding and caravans shown on the above plan, along with a parking and turning area for vehicles and the incidental mown grass areas. The planning unit is considered to be the area enclosed by the revised red line of the application and on the balance of probabilities, the evidence supports the assertion that the application site is a mixed use of land for agricultural and the siting of 3 caravans for residential use. The statutory declarations and supporting letters are sufficient to support the assertion that the caravans have been occupied for residential purposes and were not abandoned or used for some other non residential purpose over the 10 year period to the present day.

South site area PL/2023/10547

The stat dec is muddled with the lettering of some of the items for the southern site area for PL/2023/10547. The presence of A (the mobile home) and B (Luton lorry used for storage) are evidenced by the stat dec and aerial photo from 2010 and 2014 respectively. On this matter, the applicant states:

> On 15th October 2010 I purchased a mobile home from Mr Nightingale of 135 Rownhams Lane, North Baddesley and the receipt is attached at DC7. Also attached at DC7 is an invoice dated 18th October 2010 for the delivery of the mobile. It is stated to be a 30ft x 10ft mobile which is what I have on site in the position marked A on the plan at DC6. Shortly after

Therefore, on the balance of probabilities, the area occupied by A has been used for the stationing of a mobile home for residential purposes. The statutory declarations and supporting letters are sufficient to support the assertion that the caravans have been occupied for residential purposes and were not abandoned or used for some other non residential purpose over the 10 year period to the present day. Planning consent is not required for the lorry, regardless of its use for incidental storage.



The log cabin (C) does not appear on aerial mapping until 2017. On this matter, the applicant states:

> On 23 April 2018 my son, Jamie Cartwright, purchased a log cabin [as confirmed in the invoice at DC11] and in either May or June 2018 we constructed is in the south west corner of the land, annotated C at DC6 and photo 3 at DC12. Jamie bought this as his family wanted their own

The applicant's agent has clarified in the revised description that consent is sought for the log cabin as ancillary operational development comprising of the erection of a timber cabin. As unauthorised operational development, the cabin would be subject to the 4 year time limit for enforcement action. The LPA is satisfied that the operational development is immune from enforcement action as it has been in place for more than 4 years from the arial photos and stat dec.

The use of the log cabin is considered by the applicant to be an ancillary use to the caravan A. The precise use of the log cabin has not been supported by specific evidence, but it is likely that the cabin has been used in an ancillary capacity to the residential use of the main Caravan A.

The raised decking and scalpings to the west side front of the mobile home first appear on the Sept 2020 aerial photo. On this matter, the applicant states that this work was done in 2018:

> At around the same time I erected raised decking to the front of the static caravan [decking annotated as E] and hardsurface [F at DC6] which are visible on the 2020 aerial photograph and in photograph 1 at DC12. At the same time as doing the decking I clad the faces of the static caravan with timber in order to give it a matching countryside appearance.

Therefore, the surfaces would constitute unauthorised operational development and is subject to the 4 year time limit for enforcement action. The LPA is satisfied that the operational development is immune from enforcement action as it has been in place for more than 4 years from the arial photos and stat dec. These surfaces, by virtue of their function, clearly relate to the purposes, function and use of the caravan A.

The remaining areas of mown grass have likely been used for purposes incidental to the primary use of land for the stationing of a caravan for residential purposes. The area is clearly demarcated by fences, a gate and an area of woodland. There is no apparent separate planning unit within this site.

Therefore, the LPA can conclude that on the balance of probabilities, the land has been used for the siting of 1 caravan for residential use with ancillary operational development comprising the erection of a timber cabin.

Is Continuous Occupation required?

The applicant has addressed this matter with a statement (officer bold):

*It is accepted that not at all times have the subject caravans been in occupation continuously. In this regard I would draw attention to the case of Wychavon District Council v Secretary of State for Environment, Transport and the Regions and Dunn [2000] JPL 495. In this case the Court agreed with the Inspector that the use of a site as a caravan site was year round even though occupation was limited to the period from Lady Day to October 31st each year. The Inspector held that '**the use as a caravan site subsists throughout the winter months even though it is inactive**. The use is seasonally dormant but does not cease at the end of October' (quoted in the judgement of George Bartlett QC at paragraph 4 of the Official Transcript).*

*In the above case **the use of the site** for human habitation was continuous throughout the period even though the occupation was not. The caravan remained in a habitable state throughout the period even though it was not inhabited every night.*

One should also consider the case of North Devon District Council v Secretary of State for the Environment and others [1998] 2 PLR 46, in which Christopher Lockhart-Mummery QC, sitting a High Court judge, found as follows:

"Clearly, continuous physical occupation is not required for there to be occupation in breach. Beyond those few comments, it would not be appropriate to indicate any guidelines. This question is quintessentially a question of fact [and] degree to be considered in the light of all surrounding circumstances, including the length of physical occupation and any other indications or evidence of continuing occupation, despite the physical absence of the occupiers." (at p.54)

*In this regard an appeal decision dated 11th June 2007 which post-dates these cases is highly relevant and I attach this to this covering letter. In this case the Inspector held at [77]: "'**I think it is perfectly possible for someone to divide their time between two established residential properties without the continuity of use of either of them being called into question**..." The Inspector continued at paragraph 79: "The correct test for continuity or continued use is whether the Council would have been in a position to issue an enforcement notice at any time."*

*Accordingly, it is entirely possible (and in accord with common sense) that **there does not need to be continuous physical occupation in order to establish a residential use of land.***

The agent states:

Application of the principles in the decided cases and appeals clearly supports my professional view that the subject land has been continuously used for the stationing of ..... caravans for use ... and associated ancillary activities for residential purposes for a period in excess of ten years.

The LPA can interpret the case law against the definition of caravans and the use of land for the siting of caravans, which is a sui generis use of land. Caravans are not buildings by legal definition. There is no need for the *occupation* of the caravans to be continuous to establish the lawful *use* of the land for their siting.

The statutory declarations and supporting letters are sufficient to support the assertion that the caravans have been occupied for residential purposes and were not abandoned or used for some other non residential purpose over the 10 year period to the present day.

Conclusion

S191 and 173 (B) of The 1990 Act are relevant, with the guidance in the NPPG para 006.

With reference to Planning Practice Guidance relative to Lawful Development Certificates, 6 March 2014:
In the case of applications for existing use, 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.
Paragraph: 006 Reference ID: 17c-006-20140306

This application seeks to demonstrate, on the balance of probabilities, that the applicant has:

For PL/2023/10545 used the land for a mixed use for agricultural and the siting of 3 caravans for residential use.

For PL/2023/10547 use the land for the siting of 1 caravan for residential use with ancillary operational development comprising the erection of a timber cabin.

The use of land for the stationing of caravans is a sui generis use. Caravans, by their legal definition, are intended for human habitation. Therefore, it is only the use of the land for a period of ten years that is of relevance to the applications, along with any ancillary activities and associated operational development.

The evidence submitted in support of the applications, (which have been amended to exclude any animal enclosures, the site of the poly tunnel and the play area) supports this assertion. It is considered that sufficiently clear and unambiguous evidence for the required 10 year and 4 year periods has been submitted for the certificates to be issued.

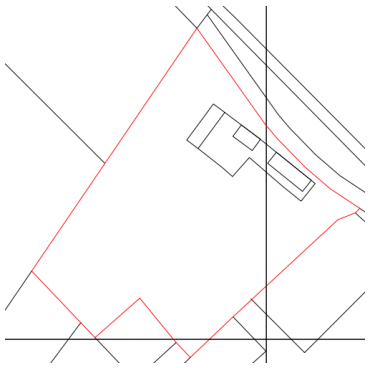
RECOMMENDATIONS:

PL/2023/10545 APPROVE

Reason: The Council is satisfied that the site known as Sunset View Farm, Pitton Road, Pitton, Salisbury, SP5 1EJ edged red below has been used for a mixed use, for agricultural purposes and the siting of 3 No caravans for residential purposes, for a period in excess of ten years to the date of the application such that it is now lawful and immunity from enforcement action accrues under s171B(3) of the TCPA 1990 as amended.

Schedule 1: Mixed use of land for agricultural purposes and the siting of 3 caravans for residential use.

Schedule 2:



PL/2023/10547 APPROVE

Reason: The Council is satisfied that the site known as Sunset View Farm, Pitton Road, Pitton, Salisbury, SP5 1EJ edged red below has been used for the siting of 1 No caravan for residential purposes for a period in excess of ten years to the date of the application, with ancillary operational development comprising the erection of a timber cabin, for a period in excess of four years to the date of the application, such that it is now lawful and immunity from enforcement action accrues under s171B (1) and (3) TCPA 1990 as amended.

Schedule 1: Use of land for the siting of 1 caravan for residential use with ancillary operational development comprising the erection of a timber cabin.

Schedule 2:

