

Development Manager
Barnsley Council
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Our Ref: BTA/BTA/MOL97/1

Your Ref:

01 July 2021

Dear Sir

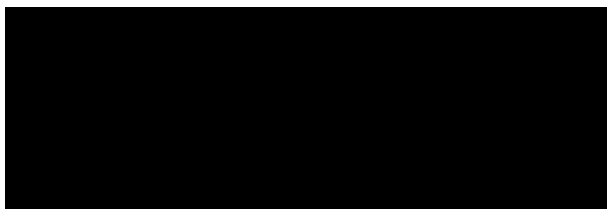
**APPLICATION FOR CERTIFICATE OF LAWFUL USE
MOLBEE FARM, POND COMMON LANE, OXSPRING
STATIONING OF RESIDENTIAL CARAVAN**

We are instructed by Alison Molyneux who lives in a caravan stationed on land at Molbee Farm, Pond Common Lane, Oxspring. She has lived there in a caravan since 1998 and used land adjoining for residential purposes incidental to the use of the caravan.

With this letter we enclose an application for a Certificate of Lawfulness of Existing Use in respect of the land for the siting of a caravan for human habitation. The application comprises

1 Application Form

2 Location Plan



History of the Caravan on the Site

The history of the use of the application site, including the land adjoining the caravan, which has been used incidental to the residential as garden ('the Garden'), is set out in the statutory declaration of the applicant.

In short, a caravan ('the Caravan') was moved onto the site in 1983 (and there has been a residential caravan on the site ever since. The siting is some 50 feet from the original caravan ('the Original Caravan') which was the subject to temporary planning permissions and was the subject of enforcement action (see below).

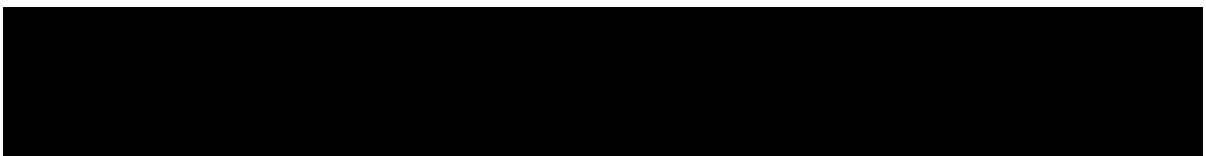
The Caravan was occupied from 1983 until 1991 and then again from 1998 to the present. During this latter period at least, the Garden has been used with it as part of the residential use.

The Caravan was replaced in about 2013: the old van was removed and the new van installed in the same location on the same day and so the residential use of the site was unbroken.

Evidence in Support of the Application

Evidence has to be produced which is sufficiently precise and unambiguous to justify the grant of the Certificate applied for on the balance of probability (see PPG Para:006 Ref ID: 17c-006-20140306). In this case evidence must be produced to show use of the application site for the siting of a residential caravan throughout the 10 years commencing with the date of this application.

To establish this, we attach a statutory declaration of Alison Molyneux who has lived on the site continuously since 1998. She had also previously lived on the site with her parents. This is evidence on oath by a person with personal knowledge of the site and its use,





Justification for Granting the Certificate

Section 171B of the Town and Country Planning Act 1990 ('the Act') sets out time limits within which enforcement action can be taken against unauthorized development. In the case of operational development this is within four years of the period beginning with the date on which the operations were substantially completed (section 171B(1)).

However, the stationing and use of a residential caravan is usually considered to be a use rather than operational development. On this basis enforcement action may only be taken within 10 years beginning with the date of the breach (section 171B(3)).

Section 191(2) of the Act provides that operations are 'lawful' if no enforcement action may be taken in respect of them, whether this is because no development was involved or because the time for enforcement action has expired. This is subject to the proviso that they do not constitute a contravention of any enforcement notice then in force.

Section 191(4) of the Act provides that if an application for a Certificate of Lawfulness is made under that section and the local planning authority are provided with information satisfying them of the lawfulness of the use or operations at the time of the application, then they shall issue a certificate.

The standard of proof is the balance of probability.

We are aware that enforcement notices were served in respect of the Original Caravan on land at Molbee Farm in 1981. However, it is not considered that they prevent the issue of a Certificate.

Both related to the breach of a condition on temporary consents granted for stationing of the Original Caravan, which required the caravan to be permanently removed from the site, and also any extension to it. The steps required by each notice was to remove the 'said caravan'/ 'said extension' from the said land and to leave the site in a 'neat and tidy condition'.

The notices did not require cessation of the use of the land for the stationing of a caravan for human habitation.

The caravan and extension, to which the notices related, were indeed removed from the site in compliance with the notices which were then satisfied.

This was the Original Caravan but the caravan to which this application relates is not the caravan to which the notices related. It is a different caravan stationed some 50 feet from the siting of the Original Caravan which had been removed in compliance with the enforcement notices.

We note that, despite this, the siting of the Caravan was the subject of a successful prosecution in 1991 for failure to comply with the enforcement notices. However, it is considered that, if proper advice had been taken at the time, the prosecution would not have been successful for the following reasons (in respect of which we have taken Counsel's advice).

First, the notices related to the specific caravan and extension ('said caravan' and 'said extension') permitted by the temporary consents. When these were removed, the enforcement notices were complied with. As such the temporary permissions fell away and lawful use of the land returned to agriculture.

The enforcement notices did not prohibit the use of the land for the stationing of a residential caravan. Therefore, when the Caravan was brought on to the land in a different location it was a fresh breach of planning control being the material change in the use of the land from agriculture to the siting of a residential caravan. It was not in breach of the terms of the enforcement notices.

Unfortunately, the summons we have seen refers to the discontinuance of the use land being a requirement of the notices, but this is in error. There was no such requirement in the notice.

Finally, we add that the drafting of the enforcement notices was itself defective because the requirement to return the land to a 'neat and tidy condition' is insufficiently specific and so casts doubt on the validity of the notice.

In short, the Caravan is not in breach of the terms of any enforcement notice and so the current application is not affected by the terms of section 191(2) of the Act.

As to the sufficiency of the evidence, the facts are set out as evidence on oath by way of the Statutory Declaration of Alison Molyneux who has known the site for more than 40 years and has lived there continuously since 1998 in the Caravan, which is the subject of this application.

Her evidence is supported by photographs showing the use of the site over many years for a residential caravan and garden going with it.



It is considered that the evidence is sufficiently precise and unambiguous to establish, on the balance of probability, that the application site has been used for the stationing of a residential caravan and as garden to it for a continuous period in excess of 10 years and such use is continuing. Accordingly, we would ask officers to agree that the Certificate sought should be granted.

However, if you require any further information or clarification please contact our Mr Axe.

Yours faithfully

LCF LAW

