



**The Town and Country Planning Act 1990 (as amended)
Lawful Development Certificate – Section 191**

Supporting Statement

To establish the Lawful Use of Land for the siting of a mobile home (caravan) for residential purposes/human habitation, associated external wooden decking area, garden/amenity area, car parking and vehicular access.

at

Caravan @ The Paddock, Spurway Mill, Oakford, EX16 9EU



Caravan at The Paddock, Spurway Mill, Oakford, EX16 9EU

Introduction

XL Planning Ltd are instructed to submit a Lawful Development Certificate (LDC) on behalf of the landowner/applicant under the provisions of section 191 of the Town and Country Planning Act 1990, to determine whether an existing use or operation would be lawful for planning purposes.

The site and land the subject of this application is known as Mobile Home (caravan) at The Paddock, Spurway Mill, Oakford, EX16 9EU. (See site location plan)

Section 191 Town & Country Planning Act 1990 states; at (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.

Lawfulness of a use or development (as in this case) is 'not' dependent upon an LDC or Planning Permission. This has been confirmed in relation to the lawfulness of an existing use

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or development by the judgment of the High Court in *Hillingdon LBC v SSCLG [2008] EWHC 198 (Admin)*.

However, the landowner and applicant has chosen in this case to apply for a Certificate of Lawful Use/Development (CLEUD) and the following therefore applies.

Guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates. (Revised 6th March 2014) states.

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Paragraph: 009 Reference ID: 17c-009-20140306

Revision date: 06 03 2014.

The Local Planning Authorities (LPA) attention is also drawn to Section 191(4) of Town and Country Planning Act 1990 which states.

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, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

As a result, the LPA do have the ability to issue a certificate for the use, operation or other matter described in the application. *OR* that description as modified by the LPA, or a description substituted by them. In summary the LPA have the ability, and flexibility to issue a certificate in terms/description that may differ from the description contained within the application, as an alternative to refusing the application.

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that, and *specifically in relation to this application* that.

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

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This supporting statement and submitted documentation provides factual information and evidence in accordance with guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates. (Revised 6th March 2014)

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191. The applicant understands that the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

In the case of applications for existing use and operational development, as in this case. 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.

A local planning authority needs to consider whether, on the facts of the individual case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application, or any subsequent appeal process.

Site and surrounding area

The caravan at The Paddock, Spurway Mill, Oakford, EX16 9EU, is located within the Mid Devon District Council Area. The land contains a mobile home (a caravan by definition contained within the Caravan Sites and Control of Development Act 1960) which is the subject of this application. The wider site on which the mobile home is situated (the land and planning unit) which is within the applicant's ownership, comprises of land for the siting of the mobile home, associated external wooden decking area, garden/car parking and vehicular access. The land use surrounding the application site is mostly woodland, with a small number of residential dwellings and associated garden areas to the south and west. The mobile home can be seen on the below Ariel view (indicated by the red arrow). Spurway Mill is 2k (1.3 miles) to the southwest of the village of Oakford.

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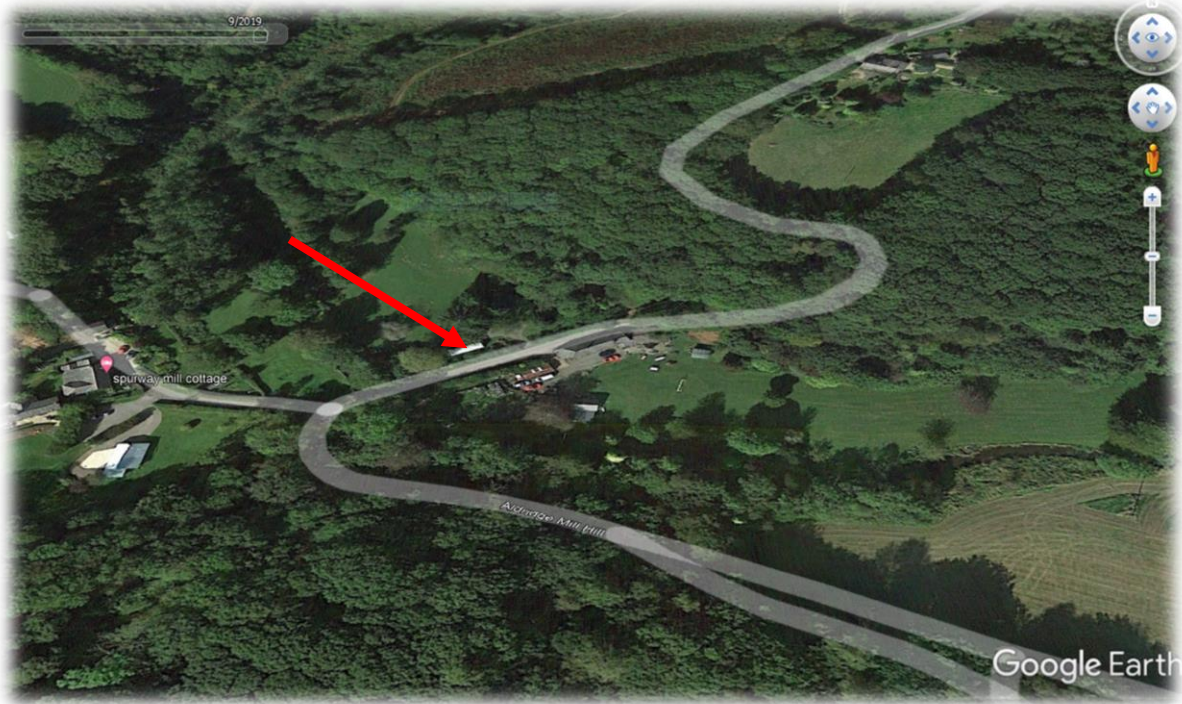
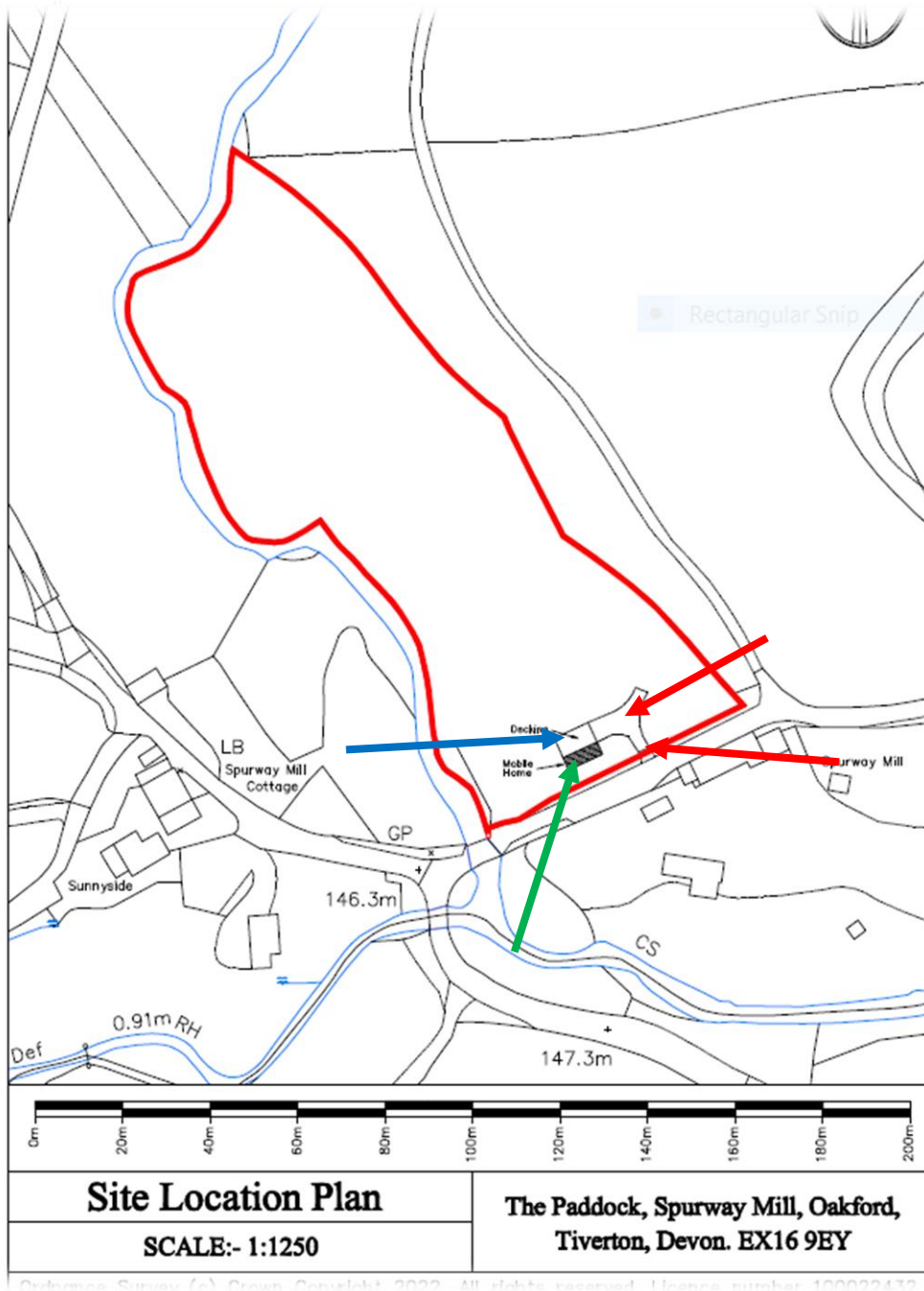


Image Courtesy Google Earth dated 18/9/2019 – Caravan at Spurway Mill identified by red arrow.



Site Location Plan. Caravan green arrow, decking blue arrow, and vehicular access and parking red arrows.

Planning History

Research reveals the following history. No records in relation to the location of the caravan and site the subject of this application. However, the only record on-line relates to the dwelling opposite (south) the site

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Property History

010009450518 | Spurway Mill Oakford Tiverton Devon EX16 9EU

[← Back to search results](#)

Address **Property History (1)** Constraints (2) Map

Rectangular Ship

Planning Applications (1)

- [Erection of replacement dwelling](#)
Ref. No: 01/00793/FULL | Status: Application Permitted

Planning Appeals (0)

Planning Enforcements (0)

Properties (0)

Building Control Applications (0)

Mid Devon District Council Planning online search

Research also indicates that there has been no planning enforcement notice served, or that exists at the time of this application. The exact current location of the mobile home has been identified on the google earth view as detailed above, and on the submitted site location plan (SLP).

The Case for the Issue of a Certificate

Section 55 of the Town and Country Planning Act 1990 (as amended) sets out the definition of development.

55 (1) of the Act, states that “Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

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As a result, planning permission is required for any building operation or change of use on, or of the land. The siting of a mobile home (caravan) for residential purposes/human habitation, construction of the external decking area, formation of vehicular access and parking, and the change of use of the land to garden, on the site the subject of this application, constitutes a material change of use of the land and unauthorised operational development that requires planning permission.

If planning permission is not obtained or deemed to be granted by virtue of any other legislation, that use, would be considered as unauthorised development contrary to Section 171A Town and Country Planning Act 1990 which states at.

(1) For the purposes of this Act—

- (a) Carrying out development without the required planning permission; or
- (b) Failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

However, Section 191 Town & Country Planning Act 1990 states; at (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.

As mentioned previously. No enforcement action has been taken and no extant enforcement notice is in force.

The time limits that relate to enforcement action are identified at; Section 171B (3) of the Town and Country Planning Act 1990 and state; Time limits.

(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.

This application relates to the unauthorised material change of use of agricultural land, to a mixed use of agricultural land and for the siting/placement of a residential mobile home, the construction of an associated decking area, the creation of a garden area, and vehicular parking and access, on that land, and the use of that mobile home (caravan) and land for human habitation and residential purposes. For a continual period in excess of ten (10) years prior to the date of this application.

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R (oao Alison Sellars) v Basingstoke & Deane Borough Council [2013] EWHC 3673 (Admin) states: “The identification of the appropriate planning unit (whether larger or smaller than the land specified in the application) is an essential part of the decision whether a certificate under s191 should be granted.”

The uses referred to within this application have, over more than a ten-year period, created a new and separate planning unit as detailed in case law; *Burdle v Secretary of State for the Environment*, which provides the accepted guidance.

The planning unit is a concept which has evolved as a means of determining the most appropriate physical area which to assess whether a material change of use has occurred. The general rule and starting point are that the whole of the area in the same ownership or occupation should be considered. However, the High Court in the case of *Burdle* suggested three broad tests for determining the appropriate planning unit.

Those three (3) scenarios are as follows.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

The first (1st) test would be considered as relevant in this case.

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In this case the unit of ownership, is the whole site as indicated on the submitted Site Location Plan (SLP)

The landowner having acquired the site in 2002 continued to use it for the siting of the residential mobile home (caravan) associated garden area and continued to use the existing vehicular access and area adjacent to the mobile home to park motor vehicles. *This use*

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became the single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

The location of a residential caravan is a material change of use of land, and that caravan can be relocated within a defined planning unit. Therefore, the red line as identified on the submitted Site Location Plan (SLP).

2002 was the first date of the breach, and the commencement of the relevant unauthorised ten (10) year period.

The landowner/applicant and caravan occupants had to access the mobile home with vehicles and on foot and did so from the highway located on the southern boundary of the site. This access route can be identified on the submitted google earth historical snap shots.

The applicant considers that the circumstances of this CLUED application fall within the first (1st) category of *Burdle*. thus, creating the separate and independent planning unit the subject of this application.

The siting/placement of the caravan is considered as a material change of use of land that requires planning permission. The mobile home (caravan) currently on the site, and at the time of this application, is a mobile home that replaced the original caravan in 2003. This replacement caravan was within the same planning unit and satisfied the planning definition of a caravan.

This application relates to the permanent use of the land that is owned by the applicant. This planning unit has been used to station a caravan, park vehicles, use land as garden and to access the unit from the highway. The caravan has always been located there for residential purposes and human habitation, and for no other purpose, since its '*unauthorised*' use and occupation in 2003. The caravan is equipped for residential use, and the owner/applicant has rented the caravan, either on a shorthold tenancy or holiday basis continually up until the date of this application. The caravan contains items owned by the applicant that allow for residential use, such as a fridge, Gas cooker, microwave, iron, Hoover, cutlery and crockery, and occupants also keep their own personal possessions inside the caravan whilst in occupation. The submitted statutory declarations describes the facilities that the caravan provides for that purpose, namely a kitchen and living area, a shower room with a toilet and sink. Plus, two (2) bedrooms. The caravan has been supplied by a separate metered mains electricity supply since 2003, and water from a separate bore hole, and has a foul drainage

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system into an adjacent septic tank located close to the caravan. Bottled gas is used for heat and cooking. The decking area has been in place since it was completed in 2003.



Caravan external electricity supply.



Caravan bottled gas supply (red arrow).



Caravan foul waste disposal and adjacent septic tank



Caravan residential paraphernalia and decking on northern elevation

Case law in the *Thurrock* decision is therefore relevant in that there would always be evidence of residential use and occupation of the caravan if an Inspection visit had been made by the local planning authority (LPA) at any time after the acquisition of the site by the applicant in 2002 and the siting and residential use of the existing caravan and associated land in 2003, up until the date of this application.

The Caravan Sites and Control of Development Act 1960 (as amended in 2006) and the Caravan Sites Act 1968 (as amended), defines a caravan 'maximum' dimensions as (a) Length (exclusive of any drawbar) 20m (65.6FT) (b) Width: 6.8m (22.3ft) (c) Overall height (measured internally from the floor at the lowest level to the ceiling at the highest level) 3.05m (10ft) The definition refers to "*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 other motor vehicle so designed or adapted*",

The caravan on site is what is more commonly referred to as a site caravan or mobile home. It is well within the maximum dimensions as detailed above, it is designed for human habitation, and if required or necessary could still be moved around the site. (See photo below). Or away from the site on a low loader.

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Caravan the subject of the application.

The pedestrian and vehicular access into and out of the location has always been from the public highway on the southern boundary of the site. That access has been used continually for well more than ten (10) years (since 2003) in relation to any change of use. There is an identified area of garden (amenity) land adjacent to and around the caravan, predominately to the north, that is used ancillary and incidental to the use of the caravan for residential purposes. This land has been maintained, by cutting the grass and introducing domestic paraphernalia, by the landowner and applicant to be used in association with the caravan ever since 2003. For the avoidance of doubt that area of land, the wooden external decking area, and the vehicular access and parking are identified on the submitted SLP.

The applicant and owner/occupier of the caravan has paid Local Authority Business Rates to Mid Devon District Council (MDDC) since at least 1st April 2015. VOA reference 169EUPAD0000X, and up until the current date since 1st April 2017. (See below).

The Paddock, Spurway Mill, Oakford, Tiverton, Devon, EX16 9EU

1 April 2015 - 31 March 2017 [Rectangular Snip](#)

Your rateable value was **£800.00**

! This is not the amount you will have paid.

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Valuation information

Description	Caravan & premises
Local authority	Mid devon
Local authority reference	169EUPAD0000X
Transitional relief certificate issued	No
Special category code	048G
Effective date	1 April 2015
List alteration date	25 October 2016
Appeals	0

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The Paddock, Spurway Mill, Oakford, Tiverton, Devon, EX16 9EU

1 April 2017 - present

Your rateable value is **£1,000.00**

! This is not the amount you will pay.

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Valuation information

Description	Caravan & premises
Local authority	Mid devon
Local authority reference	169EUPAD0000X
Transitional relief certificate issued	No
Special category code	048G
Effective date	1 April 2017

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The details of land ownership, occupation, and use of the mobile home, plus land use are referred to within the submitted Statutory Declarations (SD's) and exhibits, made by the applicants.

It is evident, and beyond the balance of probability, that the unauthorised residential use of the mobile home and unauthorised decking, along with the use of the associated garden and vehicular parking and access has existed continually for more than ten (10) years. Four (4) years in relation to the decking.

The applicant would claim that the placement/retention without planning permission of a caravan (mobile home) on land is a change of use that requires planning permission.

The current location of the mobile home and associated garden area and vehicle parking with road access has been specifically identified, for the avoidance of doubt, by way of a red line on the submitted SLP. However, as the unauthorised change of use involves a mobile home (caravan) within a defined planning unit (red line) then the mobile home could be moved anywhere within that planning unit without any change of use taking place. The dimensions of the mobile home are within those as defined within the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968 (as amended),

The LPA would not have the ability to state what size of 'caravan' is acceptable within the identified planning unit. If that caravan conforms to the definition, and relevant dimensions.

The Evidence

The evidence base in relation to this application constitutes the following material and documentation:

- Plans submitted in support of this application
- Statutory Declarations (SD's) and exhibits from the landowner/applicants.
- Documentary submissions, exhibited along with the SD's.

Conclusion

Having regard to the matters set out above, evidence submitted, material factors such as case law, as well as evidence on site, and the fact that no known enforcement action has

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been undertaken historically in relation to any unauthorised use, relating to the caravan sited within the defined planning unit. It is respectfully suggested, that on the balance of probability, the Local Planning Authority (LPA) are able to issue a suitably worded Lawful Development Certificate, with suitably annotated site plan, under the provisions of Section 191 Town & Country Planning Act 1990, confirming that the use of the land for the siting/placement of a caravan (mobile home) for residential purposes and human habitation, along with associated wooden decking, road access, vehicle parking and garden area are immune from planning enforcement action.



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