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 porch and garden/amenity area, car parking and vehicular access.

at

Daggeridge Farm, Way Village, Devon, EX16 8HU

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Caravan at Daggeridge Farm, Way Village, EX1 8HU

Caravan at Daggeridge farm, Way Village , EX16 8HU – photo is from the public highway

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 Daggeridge Farm, EX16 8HU. (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—

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(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 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.

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, 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 particular application, or any subsequent appeal process.

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Site and surrounding area

The caravan at Daggeridge Farm 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 agricultural land and an agricultural building, associated garden and car parking, porch and vehicular access. The land use surrounding the application site is agricultural, with the applicant owning land and woodland to the north and east of the mobile home. The mobile home can be seen on the below ariel view (indicated by the blue arrow). Daggeridge Farm is approximately 3.5 miles north east of Cheriton Fitzpaine, 1.9 miles south east of Way Village and 4 miles south west of Tiverton.

Image courtesy Google Earth – Caravan/mobile home identified by blue arrow.

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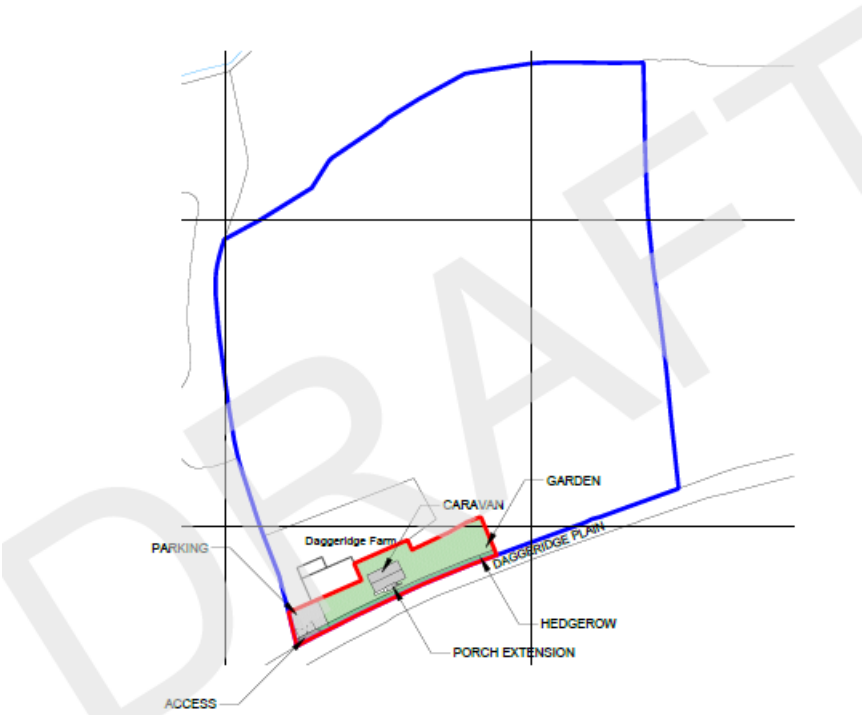

Site Location Plan

Planning History

Research reveals the following history.

01/01539/Full Retention of the use of land for the siting of an agricultural mobile home (renewal of 4/09/96/690) – Permission granted 29th November 2001

96/0069/Full Retention of use of land for siting of an agricultural mobile home – Permission granted 5th September 1996

88/02831/Full Siting of an agricultural mobile home and construction of vehicular access - Permission granted 7th June 1989

88/2292/Full Retention of agricultural building and access – Permission granted 18th May 1989

The planning history demonstrates that the mobile home/caravan has been on its current site since at least 2001. The caravan/mobile home has been on the site without the benefit of planning permission since 30th December 2006. The caravan/mobile home has therefore been on the site for a period of more than 17 years. The caravan/mobile home was occupied continuously as the sole and permanent residence of Ms M Peverill from June 1988 until she sold the property in July 2023. The caravan/mobile home was also occupied by Mr Brian Adams, as his sole and permanent residence until his death in 2022. Immediately upon the departure of Ms M Peverill the caravan was occupied by the applicant Ms T Dibble.

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.

Section 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*.

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 on the site the subject of this application, constitutes a material change of use 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

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(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; Section171B (3) of the Town and Country Planning Act 1990 and states regarding 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 use of land for the siting of a caravan/mobile home, for residential purposes, entrance porch, garden area, and vehicular parking and access, with the use of the mobile home (caravan) for human habitation and use of the garden area, vehicular parking and access for residential purposes, for a continual period in excess of ten (10) years prior to the date of this application.

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 (17 years), created a new and separate planning unit as detailed in case law; *Burdle v Secretary of State for the Environment*. This case law is considered to provide the accepted guidance.

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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 third (3rd) test would be considered as relevant in this case.

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It is clear that in this case the unit of ownership, is the whole site as indicated on the approved Site Location Plan (SLP) associated with planning permission 01/01539/Full granted on 29th November 2001 for the *'Retention of the use of land for the siting of an agricultural mobile home (renewal of 04/09/96/690).'* However, there are two distinct areas within the unit of ownership, those being the area that is the subject to this certificate application and the adjoining agricultural use. The main and primary use of the land that is included within this certificate application have been and remain residential. The previous landowner(s) were granted various planning permissions over the years in relation to the siting of the caravan/mobile home for residential occupation, but no permission has previously been granted regarding the establishment of the garden, or vehicular access and parking area that are also included in this certificate application.

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The last planning application that was applied for relating to the residential caravan/mobile home on the site was made in 2001 and was for the retention of an agricultural mobile home under reference 01/1539/Full.

Reference No: 4/09/2001/1539/

MID DEVON DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPROVAL OF FULL PLANNING PERMISSION

Name and address of applicant:
Mrs M Peverill & Mr B Adams
Daggeridge Farm
Cadeleigh
Tiverton
EX168HU

Date Registered: **28 August, 2001**

PROPOSAL: **Retention of the use of land for the siting of an agricultural mobile home (renewal of 4/09/96/690)**
LOCATION **Daggeridge Farm Cadeleigh**

G.R. 289672/109386

MID DEVON DISTRICT COUNCIL HEREBY GRANTS FULL PLANNING PERMISSION FOR THE ABOVE DEVELOPMENT

Subject to the following conditions:

(1) The caravan/mobile home hereby permitted shall be removed and the land restored to its former condition on or before 30th December 2006.

Extract from MDDC Planning Permission 01/1539/FULL and condition 1.

When "planning permission was granted for a limited period". Under the provisions of Section 72 (1) (b) for the 'Use of land to site an agricultural mobile home' (01/1539/Full) on 29th November 2001, the an annotation was added to the site location plan to demonstrate the location of the caravan/mobile home.

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This planning permission did not therefore, allow for any lawful associated residential amenity land or residential vehicular access to the mobile home. The screen shots of published aerial views of the site included later in this statement make it clear where the garden, parking and access are and have been for many years, for a period in excess of the last 10 years. The mobile home was in planning terms confined to the line set out in the 2001 planning application which cannot be the case as access had to be relevant, as would an outside amenity and car parking area. The siting of a residential caravan is a material change of use of land, and that caravan can be relocated within a defined planning unit.

MDDC Approved SLP ref: 01/1539/FULL Dated 28/08/2001

This temporary planning permission (01/1539/FULL) 'expired' on 30th December 2006 when condition one (1) required the removal of the mobile home from the land. The mobile home was 'not' removed from the land as required, and as a result on 31st December 2006 its retention (in the same location) became an unauthorised material change of use of agricultural land to a 'mixed' use of agricultural and for the siting of a mobile home for residential purposes/human habitation and use of an ancillary garden area with vehicular access and parking, contrary to Section 171A Town and Country Planning Act 1990.

This date, 31st December 2006 was the first date of the breach, and the commencement of the relevant unauthorised ten (10) year period. The unauthorised 10 year period ceased on the 31st December 2016, and from the 1st January 2017 the siting of the caravan, associated garden, parking area, access and porch became immune from enforcement action.

The landowner accessed the mobile home with vehicles and on foot and did so from the highway located to the south of the site. This access route can be identified on the submitted google earth historical snap shots and on the submitted site location plan.

The applicant considers that the circumstances of this CLEUD application fall within the 3rd category of *Burdle.* As within the applicant's larger single unit of ownership and occupation a separate unit of occupation and use has occurred, thus creating the separate and independent planning unit the subject of this application.

The siting/placement of the caravan for residential purposes (human habitation) 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 the 2001 planning application, is a mobile home that replaced the original caravan that was approved by way of 88/02831/Full (Siting of an agricultural mobile home and construction of vehicular access - Permission granted 7th June 1989). This replacement caravan was within the same planning unit and satisfied the planning definition of a caravan.

This certificate application relates to the permanent use of the land that is owned by the applicant. This planning unit has been used to station a residential caravan, park vehicles, use land as garden and to access the unit from the highway. The caravan has always been located within the planning unit for residential purposes and human habitation, and for no other purpose, since its *'unauthorised'* use and occupation in December 2006. The caravan is equipped for residential use, and the former owner and now the current owner/applicant have lived in the caravan continually since it was granted planning permission on 30th December 2001 and after planning permission expired on 31st December 2006, up until and including the date of this certificate application. The caravan is the applicants main and only place of residence, and she keeps food, clothing, and all her personal possessions inside the caravan. The submitted signed letter from the former owner and occupier of the caravan,

Myrtle Peverill, describes her occupation of the caravan from 1988 until summer 2023, at which point the ownership and occupation transferred to the applicant, Ms T Dibble. The

caravan provides facilities required for full, permanent residential occupation, namely a kitchen and living area, a bathroom with a toilet, plus two bedrooms. The caravan is supplied by metered mains electricity, mains water, and has a foul drainage system into a septic tank located close to the caravan. The applicant has no other address.

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 expiry of planning permission 01/1539/FULL when the siting and continued use of the caravan became unauthorised from 31st December 2006.

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.

Caravan the subject of the application.

Underside of caravan on certificate site

Underside of caravan on Certificate site

The pedestrian and vehicular access into and out of the location has always been from the public highway to the southwest of the site. That access has been used continually for well more than ten (10) years 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 east and west, that is used ancillary and incidental to the use of the caravan for residential purposes. For the avoidance of doubt that area of land and the vehicular access are identified on the submitted SLP and block plan.

The applicant and owner/occupier of the caravan has paid Local Authority Council Tax to Mid Devon District Council (MDDC) since 23rd September 2002. VOA reference 168HUMOB0000 (see below).

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Property information for

DAGGERIDGE FARM - MOBILE HOME, CADELEIGH, TIVERTON, DEVON, EX16 8HU

Local Authority	Mid Devon
Local authority reference number	168HUMOB0000
Council Tax band	A
Improvement indicator	No
With effect from	1 April 1993
Mixed-use property	No
Court code	None

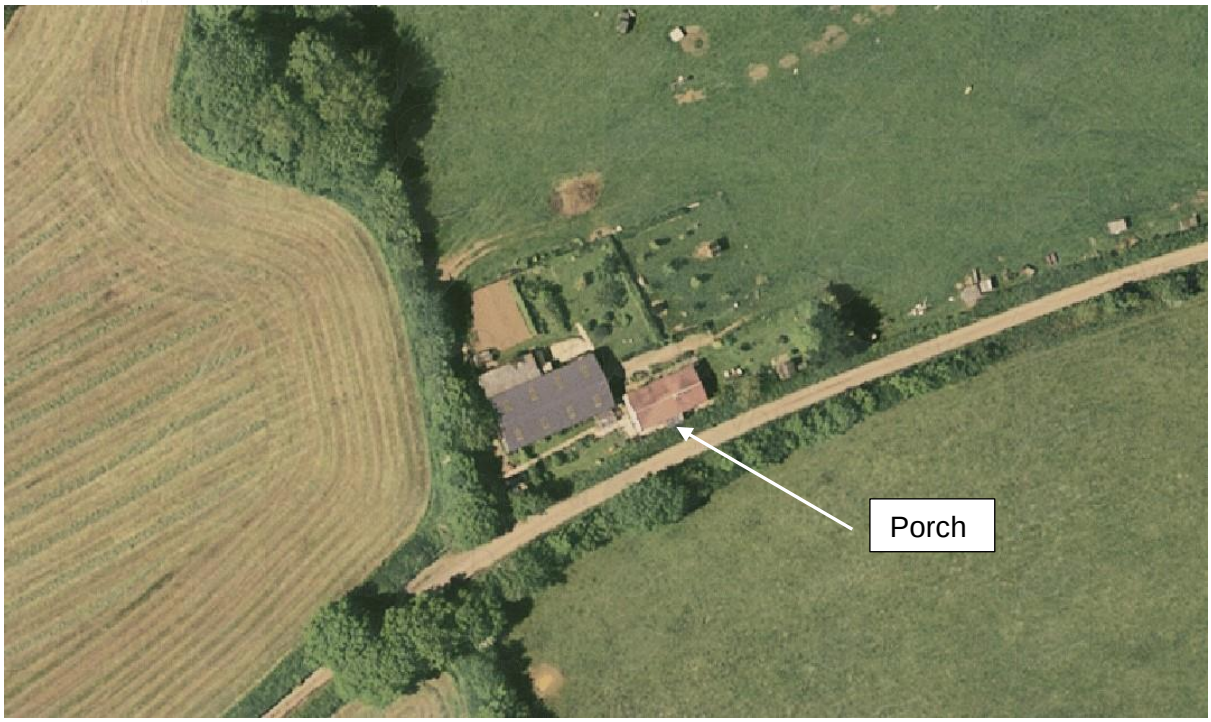
The details of land ownership, occupation, and use of the mobile home, plus land use are referred to within the submitted statutory declaration and exhibit signed by the former owner and occupier Myrtle Perverill. This statutory declaration and exhibit are unsworn because the author is unable to attend at a solicitor for the purpose of having them sworn. The documents have been approved by the signatory of this unsworn statutory declaration and she is willing to swear to the documents truth if current circumstances change before the application is determined. The former owner and occupier has relocated to Nottingham and due to age and health-related reasons is unable to attend a solicitor's office.

It is evident, and beyond the balance of probability, that the unauthorised residential use of the mobile home, entrance porch, associated garden, vehicular parking and access has existed continually for more than ten (10) years.

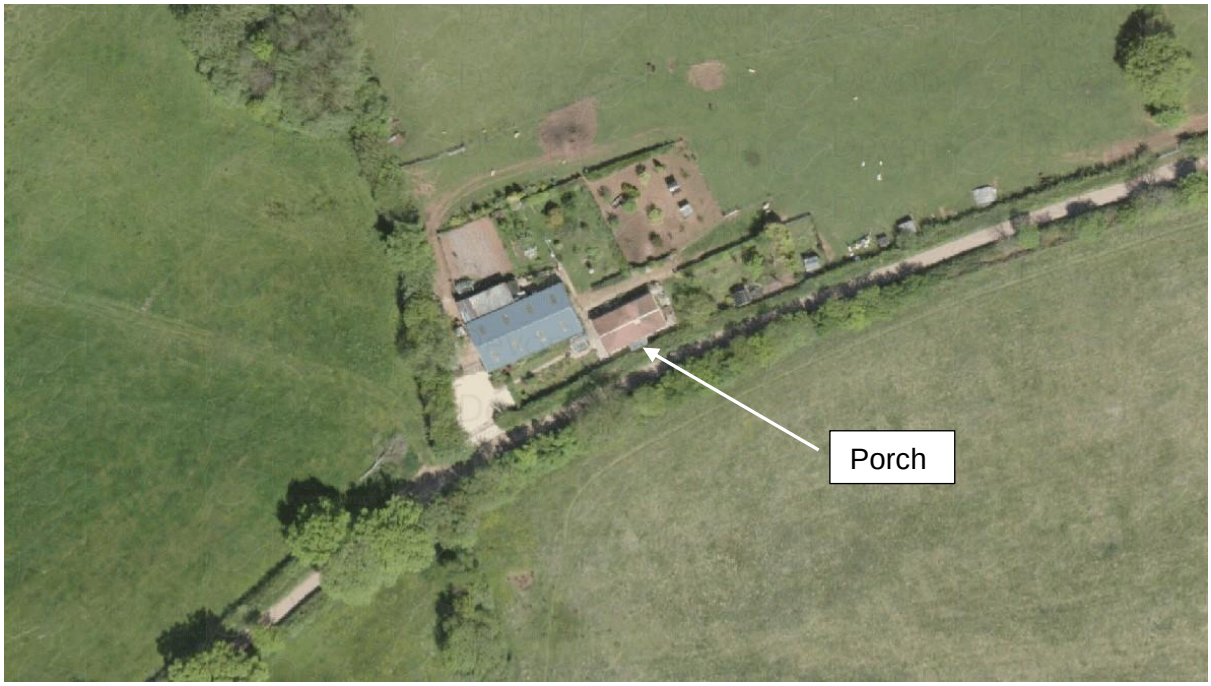
The current location of the residential mobile home and associated garden area and vehicle parking with road access has been specifically identified, for the avoidance of doubt on the submitted SLP. However, as the unauthorised change of use involves a mobile home (caravan) within a defined planning 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.

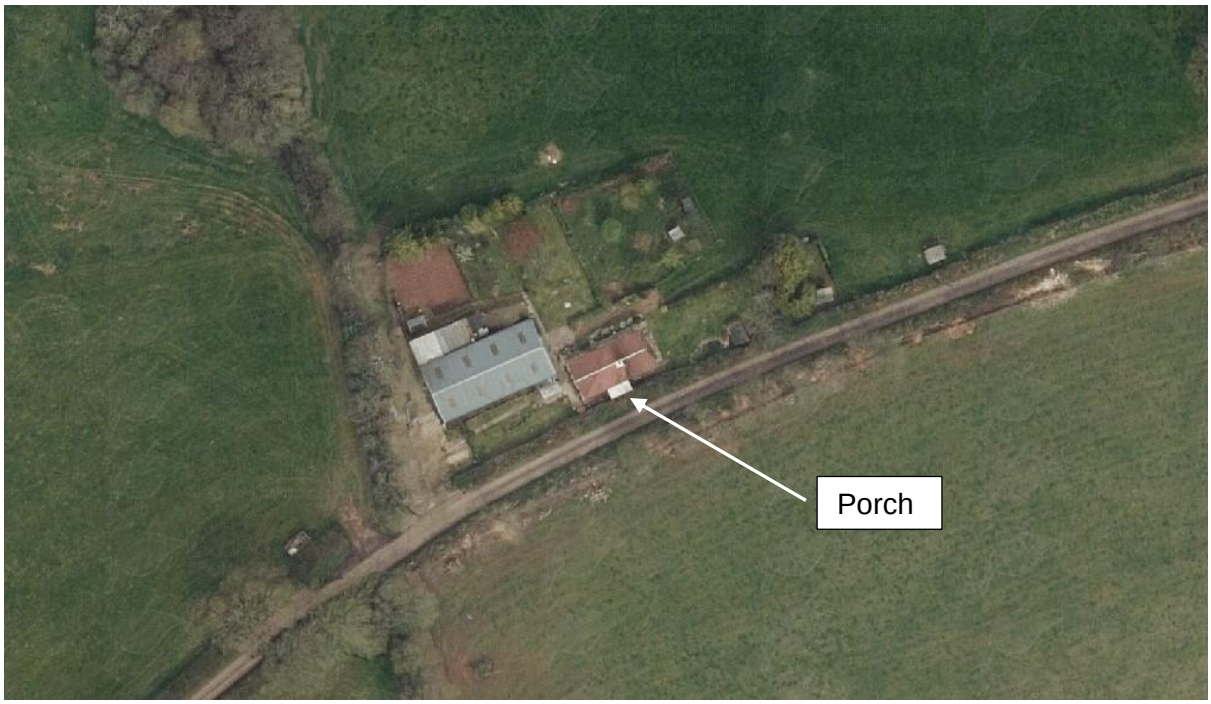
In addition to the siting of a caravan, provision of a garden, parking area and access, a porch was built and then attached to the side of the caravan more than 10 years ago. The porch can be considered as operational development. The porch is visible on the Devon Historic Environment aerial photography in 2006 and is assumed to have been added sometime between 1999 and 2006 (as this is the time gap between serial photography stored on the Devon Environment Viewer). The porch remains in place to the present day. Aerial photos and site photographs below show the porch on site. As the porch has been on site for more than 10 years, it too is immune from enforcement action and its presence can be included within the Certificate description and associated site location and block plans.



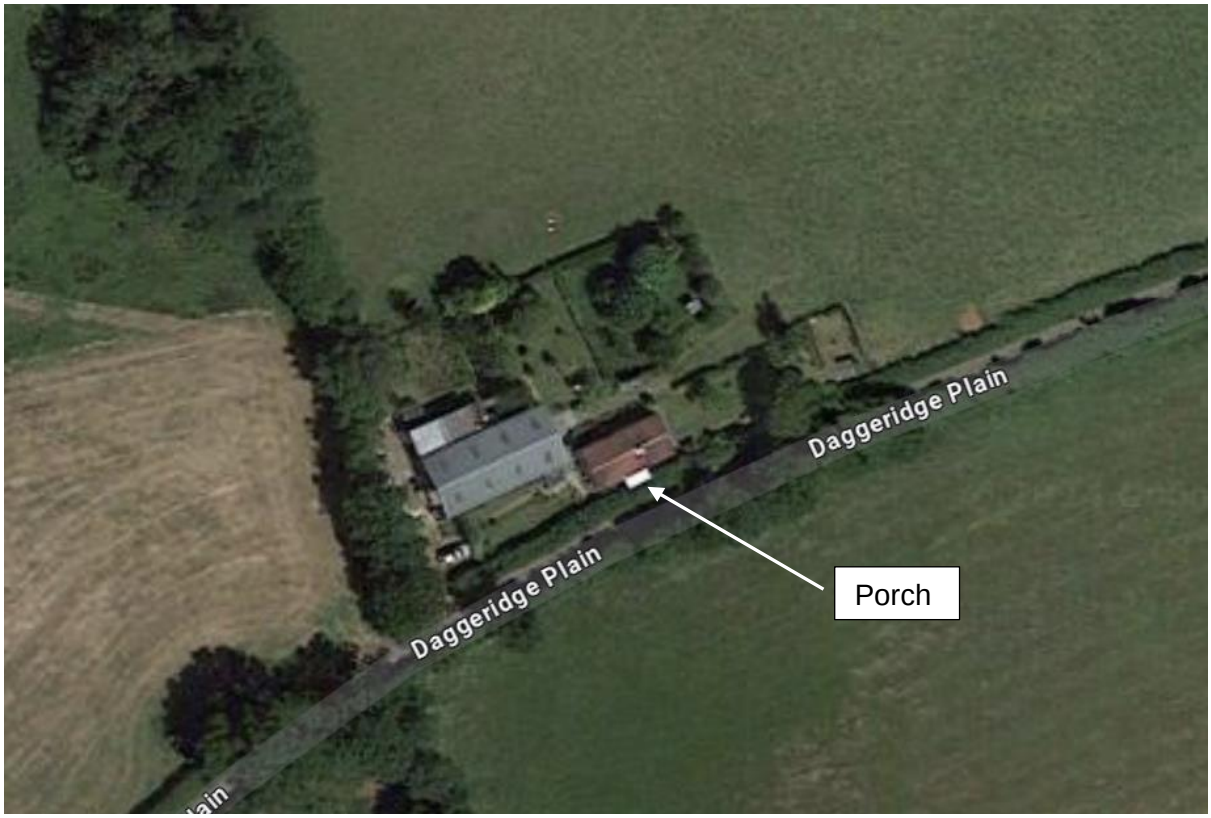
Devon HERs 2006



Devon HERs 2010



Devon HERs 2015



Google 2024

Porch as viewed from eastern end of caravan

Porch as viewed from western end of caravan

The Evidence

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

- Plans submitted in support of this application
- Statutory Declaration (SD) and exhibit from the former landowner and occupier
- Documentary submissions, exhibited along with the SD and content of this supporting statement.

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 been undertaken historically in relation to any unauthorised use or operational development, relating to the residential 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, attached entrance porch, along with associated road access, vehicle parking and garden area are immune from planning enforcement action.