**Planning Committee Enforcement Report**

**Cllr Colin Parker**

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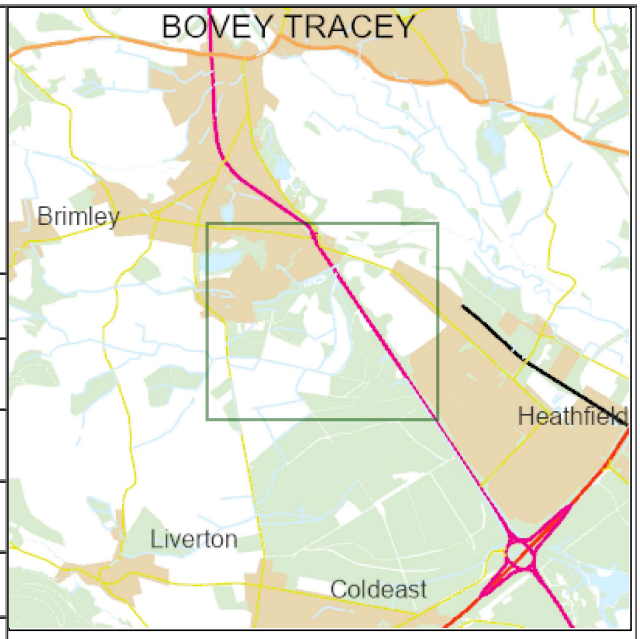
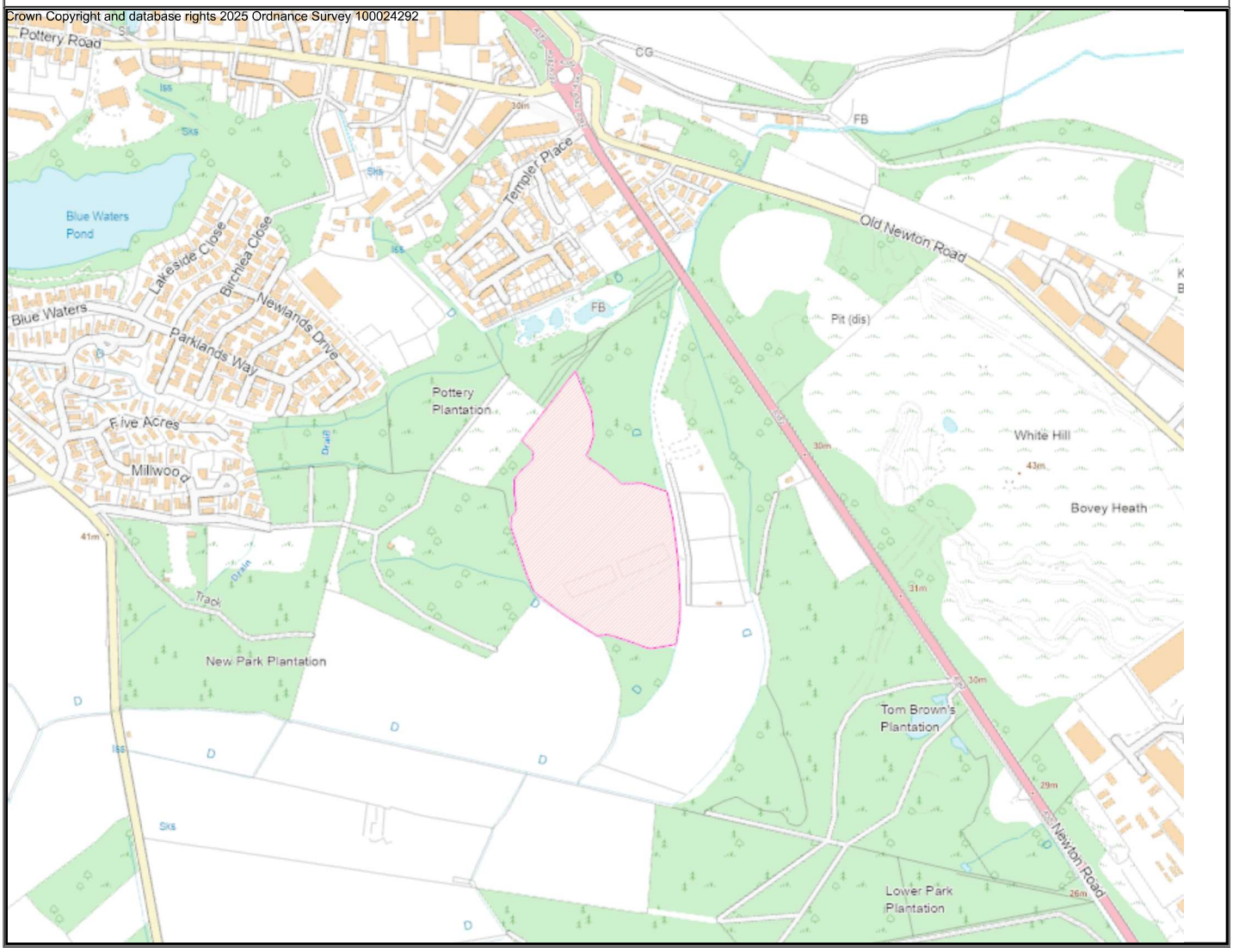
| **Date** | 15 April 2025 |
| **Case Officer** | Steven Hobbs |
| **Location** | Land Known As Bovey Heath Farm Newton Road Bovey Tracey Devon |
| **Nature** | Siting of mobile homes and construction of various buildings and structures |
| **Ward** | Bovey |
| **Member(s)** | Cllr Stuart Webster, Cllr Martin Smith, Cllr Sally Morgan |
| **Reference** | 20/00104/ENF |



## 1. REASON FOR COMMITTEE CONSIDERATION

The proposed enforcement action has the potential to render a person homeless (*see TDC Constitution, Section 6, Schedule 6, paragraph 5.1*)

## 2. THE ALLEGED BREACH OF PLANNING CONTROL & ENFORCEMENT INVESTIGATION FINDINGS

2.1 Bovey Heath Farm is located to the southwest of Bovey Tracey and is accessed via a private track off Newton Road. The land is agricultural and is situated in-between a number of surrounding plantations. The key facts in this case are as follows:

- Three static caravans have been sited on the land along with two timber extensions to the caravans. In addition, a timber building and an agricultural barn have been built on the land near the caravans.

- No planning permission has been granted for the extensions to the static caravans or the additional buildings. In addition, there is no lawful reason for the static caravans to be sited on the land for residential purposes.

- In order to remedy the planning breaches formal enforcement action is therefore required.

## 3. BACKGROUND & CONTEXT

3.1 In April 2020 the Council received complaints about mobile homes being sited on land known as Bovey Heath Farm, Bovey Tracey.

3.2 From an investigation it was noted that three static caravans had been brought onto the land. Following correspondence with the owner and their agent a planning application (reference 20/01679/FUL) was submitted for the erection of a temporary rural workers dwelling, an agricultural barn and two poly tunnels with associated works.

3.3 Unfortunately, there was a delay in determining the application. The application was subsequently withdrawn in February 2024. In the meantime from more recent visits to the site it was noted that works had been carried out to provide decking around the caravans and two of these had timber structures constructed built on the sides of them. In addition, it was noted that a timber building has been built next to the caravans which is used to keep rabbits and guinea pigs. From the investigation it is claimed that one of the extensions was built in January 2020 and the other was added in July 2021. It is also claimed that the timber building situated near the caravans was built in July 2021. However, with regards to the extension completed in January 2020 this did not appear to be in place when a site visit was carried out in July 2020.

3.4 As the planning application had been withdrawn the Council were looking at taking action to remedy the breaches. However, in March 2024 a Certificate of Lawfulness (reference 24/00540/CLDE) was submitted for an existing single dwelling (Class C3). This covered the use of the three static caravans as a single dwelling. This was refused on 4 June 2024 for the following reasons:

*The existing 3 mobile homes are each compliant with the definition of a caravan as set out in Section 13 of the Caravan Sites Act 1968 due to meeting the size criteria, the movability test and being designed for human habitation. Consequently, the caravans form 3 separate units capable of independent occupation, and as a result the development is considered to constitute the use of land rather than operational development as a single dwelling. The decking and more recent timber-clad structures adjoining the caravans are considered to have insufficient permanence, and remain separate from the caravans themselves, such that they do not remove the caravans from the legal definition, and do not allow the three to be considered as one residential unit. Therefore, in accordance with Section 171B (3) of the Act, the 10-year enforcement immunity period (relevant period) applies where there is insufficient evidence to demonstrate that the breach has occurred in excess of the relevant period.*

3.5 From more recent correspondence and a subsequent site visit it is noted that the three mobile homes are being occupied by a single family. This consists of the owners and their three grown up children along with the partner of one of the children. From the site visit it was noted that all three caravans provide sleeping areas for the various occupants. However, it was clear that the cooking occurs in one of the caravans, whilst another is used to provide a lounge that is used by everyone. In addition, it appears that many of the occupants do have health issues but it is not considered that these would justify the need to reside on the land.

3.6 Although it is the Council's opinion that the mobile homes are still mobile this has been disputed by the owner. Details to support this have been submitted which set out the works required to separate the mobile homes from the structures and decking surrounding them. However, for the reasons set out in the refusal to grant the Certificate of Lawfulness the Council does not agree with this. If the Owner does not agree with the Council's opinion, then an appeal can still be submitted against the Certificate of Lawfulness or the proposed Enforcement Notice. For additional information of why the Certificate of Lawfulness was refused the observations from the Case Officer in the Officers Report have been added to the end of this report

3.7 As part of determining the Certificate of Lawfulness application a site visit was carried out and it was noted that a new agricultural building had been built on the land. As no permission had been granted for the building the owner was advised accordingly. To determine whether the building could be retained a retrospective planning application (reference 24/00885/FUL) was submitted for the erection of an agricultural building. However, this was refused on 25 July 2024 for the following reasons:

*1. In the absence of appropriate measures in form of manure management plan and due to proximity to residential properties, the proposed development through its use for the purposes of housing livestock would result in unacceptable odour impact to the detriment of residential amenity of the occupiers of dwellings at Templer Place. Therefore, the development would be contrary to the provisions of Policy S1 (d) of the Teignbridge Local Plan 2013-2033.*

*2. The proposed development would result in unjustified loss of an area of species- rich grassland habitat failing to provide without appropriate and adequate compensation, and mitigation. Therefore, the development would be contrary to the provisions of Policies S22, EN8 and EN9 of the Teignbridge Local Plan 2013-2033 and LE4 of the Neighbourhood Plan.*

*3. In the absence of detailed information in respect of the design, location and viability of the proposed soakaway, and due to lack of information in respect of safe access and egress to and from the site during a potential future flood event, it has not been demonstrated that flood risk on the site and elsewhere would be managed appropriately through the life of the development to the contrary of the provisions set out in Policy EN4 of the Teignbridge Local Plan 2013-2033 and paragraphs 165 and 173 of the NPPF.*

*4. In the absence of any arboricultural impact assessment of the trees protected under TPO reference E2/08/46 located to the northwest of the proposed building, it has not been sufficiently demonstrated that the carrying out of the proposed development would not result in loss or damage to the root protection areas of the identified trees. On that basis, the proposed development is contrary to the provisions of Policy EN12 of the Teignbridge Local Plan 2013-2033.*

3.8 In this instance, given that the matter has been ongoing for a considerable time and it is considered the use of the land for residential purposes is not acceptable, enforcement action is necessary to cease the unauthorised use. In addition, as no planning permission has been granted for the timber structures and buildings, and there is no justification to retain them, enforcement action is required to ensure they are removed.

## 4. PLANNING CONSIDERATIONS FOR ENFORCEMENT ACTION

4.1 Although the static caravans have been sited on the land for a few years, it does not appear that they have been sited and used for residential purposes for the necessary ten years to be established, ten years being the length of time a use of land must be carried out to become immune from enforcement action. In addition, for the reasons set out above it is not considered that the works that have been carried out to provide the decking and extensions have stopped them being considered moveable units.

4.2 In this instance the static caravans sited on land are outside any settlement limit and no evidence of any essential need to have caravans on the land for

residential purposes has been provided. As such the stationing of the caravans on the land are considered contrary to Policies S1A, S1, S22 and WE9 of the Teignbridge Local Plan 2013 – 2033.

4.3 With regards to the agricultural building and the other structures that have been built, although they are being used mainly for agricultural purposes it has not been demonstrated that they do not have an impact on the surrounding area through possible odour impact and unjustified loss of an area of species-rich grassland habitat. In addition, it is not clear whether appropriate drainage has been provided and it has not been sufficiently demonstrated that the carrying out of the development has not resulted in loss or damage to the root protection areas of the protected trees. Furthermore, apart from the larger building the others do not appear to be appropriately designed for agricultural purposes. They appear to be more associated with the residential use of the land. As such it is considered that the buildings and structures that have been built are contrary to Policies S1, S22, EN4, EN8, EN9 and EN12 of the Teignbridge Local Plan 2013 – 2033.

4.4 The Policies of our Local Plan reflect the Core Principles as set out under the Government's National Planning Policy Framework (NPPF) and the National Planning Policy Guidance which has an emphasis on sustainable development and focusing new residential development into settlements and other sustainable locations. It is considered that in this instance the unauthorised residential use fails to uphold these principles, particularly those in Paragraph 82 of the NPPF, which requires policies and decisions to be responsive to local circumstances and local housing needs, for the reasons as set out above. It is also considered that the unauthorised buildings and structures that have been built are contrary to the Framework and Guidance.

4.5 Officers consider enforcement action is necessary and expedient to ensure the unauthorised residential use ceases and the unauthorised mobile homes are removed from the land. This is considered to be expedient and in the public interest in order to support and maintain the delivery of the Strategy of our Local Plan to avoid the inappropriate siting of residential uses in the countryside without good reason and to maintain wider principles of sustainability and good design whilst protecting the character and appearance of the area. It is also considered enforcement action is necessary and expedient to ensure the unauthorised structures and buildings are removed from the land for the reasons set out above.

## 5. RECOMMENDATION

5.1 The Committee is recommended to resolve:

To serve an Enforcement Notice to:

i) Cease using the land for the siting of static caravans for residential purposes,
ii) Remove the mobile homes from the land,

iii) Demolish the unauthored buildings and structures and remove the resulting debris from the land.

The compliance period for (i) and (ii) is recommended to be six months and the compliance period for (iii) is recommended to be three months.

In the event of the Notice not being complied with, authorisation is given to take action as necessary including proceeding to prosecution.

## 6. HUMAN RIGHTS ACT

6.1 The recommendation has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

## APPENDIX 1

## Officers Report relating to Certificate of Lawfulness existing in respect of a single dwelling (Class C3) (reference 24/00540/CLDE)

Legislative framework

The usual material planning considerations relating to matters such as policy, principle of development/sustainability, design/landscape, neighbour amenity and highways/access are not to be considered under an application for a Certificate of Lawfulness of existing use or development.

The decision is based on 'the balance of probabilities' and rests on the evidence submitted, the facts of the case and any relevant planning law and takes into account the facts presented and any contrary evidence if available, but is not assessed in relation to the usual planning considerations referred to above.

Section 191 of the Town & Country Planning Act 1990 (as amended) [hereafter referred to as The Act] allows for any person who wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The application seeks to certify that the 3 caravans with associated decking have been used as a single dwellinghouse and are now immune from enforcement action. There are three main issues to consider in the determination of this application as set out below:

a) Whether the 4-year or 10-year enforcement immunity rule should apply;
b) Whether the breach has occurred for sufficient time in order to be considered immune, and;
c) Whether the 3 mobile homes can be considered as a single dwelling.

Summary of evidence in support of the case

The applicant has submitted the following evidence which is summarised as below:
- Planning Statement
- Photographs showing the site as it stands currently.
- Statutory Declarations from M.Collett, A.Collett and J. Macclean.
- Letters from A.Collett, C.Collett and A.Holman.
- Supporting documents submitted for application 20/01679/FUL.
- Invoice showing purchase of the mobile home dated 13th September.
- Receipts for purchase of diesel.
- Receipts for purchase of gas.

The Planning Statement claims that the 3 mobile homes have been occupied as a single unit of accommodation to be looked at in its entirety with the decking included.

It is claimed that the evidence demonstrates that the mobile homes collectively with the decking do not meet the definition of a caravan as set out in Section 13 of the Caravan Sites Act 1968 due to exceeding the permitted dimensions and not being able to be moved.

The submitted evidence supported by the Statutory Declarations claims that the applicant has used the 3 caravans together as a single dwelling since January 2020 at which time the decking linking the 3 units was also complete. It is claimed that one of applicant's daughters has been residing on site since January 2021 up until now. The applicant's second daughter and his son-in-law have resided in the claimed dwelling between January 2020 and December 2021. The applicant does state that for the period between January 2021 and April 2021 he did not reside on the site however the family members as mentioned above did reside on site during this period therefore continuous residential occupation has taken place.

Summary of evidence against the case

The LPA is in possession of Enforcement Officer site visit photos dated 9th July 2020. The photographs show the three mobile homes on site with no extensions. Evidence of the decking being in place is inconclusive. The LPA notes that the presence of the extensions is not strictly used by the applicant to support the claim in this application.
Other than the above, the LPA does not hold any other specific evidence to contradict the applicants claims; however, the full assessment of the evidence in respect of the three main issues identified above is undertaken below.

Assessment of the evidence and conclusions

Each of the three main issues is assessed in turn as below.

**Whether the 4-year or 10-year enforcement immunity rule should apply.**

Mobile homes which meet the definition of a caravan are not considered development in their own right – their use is assessed in the context of fact and degree to determine whether a material change of use of the land has occurred (namely from agricultural to residential in this case). Given the evidence submitted, it is clear that a form of residential use of land has taken place on the site however it is key to establish which enforcement immunity period should apply.

In this case, in order to establish whether the 4- or 10-year rule applies, it is necessary to determine if the breach concerns operational development (4-year rule as claimed by the applicant) or whether the breach concerns a change of use of land (10-year rule). In the circumstances of the application site such assessment takes place in the form of establishing whether the mobile home units comply with the definition of a caravan as set out in Section 13 of the Caravan Sites Act 1968 and whether the units still remain mobile.

The applicant claims that the decking erected around the units has consolidated them into a single permanent structure which exceeds the dimensions set out in the definition. Following assessment of the decking on site, the LPA questions the claim

made by the applicant. As set out in the detailed description of each unit it is evident that the caravans are not fixed to the ground. The decking has been erected around the units and is also not attached to them in any meaningful way. The caravans and the decking are rested on a timber frame with some metal uprights raised on stacked breeze blocks which are not anchored or attached to the ground. Some of the uprights do not appear to be fixed to the frame.

Mobile home no.1 clearly remains movable given the lack of permanent attachment to the ground and the decking, as well as the lack of presence of the decking on two of each of its sides. The unit could be simply pulled away from the decking causing minimal damage.

In respect of mobile homes no.2 and 3, whilst fully enclosed by the decking, due to the lack of attachment to the ground or to the decking itself, it is considered that the units remain movable. It is important to note that the units do not have to be towed on wheels in order to be considered mobile under the definition. Bearing in mind the level of attachment to the decking (or lack of it) the units could be lifted out from in-between the decking and its framing. Furthermore, it can be reasonably expected that due to the simple nature of the decking, its frame, and lack of attachment to the ground, smaller parts of the decking could be dismantled by hand in a relatively short amount of time allowing the units to be pulled out.

It is clear from the photographs and evidence on site that each unit on its own would meet the definition of a caravan as set out in Section 13 of the Caravan Sites Act 1968 in respect of the dimensions. On that basis, it is concluded that each mobile home unit remains movable and meets the definition, thus the breach should be subject to the 10-year rule enforcement immunity rule as it concerns the use of land and not operational development as a single dwellinghouse. Consequently, the evidence submitted by the applicant fails to demonstrate the presence and use of the caravans for residential purposes in excess of 10-years as the applicant only claims to have been living on the site since January 2020.
Given that, the LPA considers the breach to be subject to the 10-year rule the amended time periods for immunity as set out in Section 115 of the Levelling-Up and Regeneration Act 2023 have no implications to this case.

It is also noted that, as described earlier in the report, two of the units now feature separate extensions. Given that these do not form part of the evidence of the claim by the applicant, an in-depth assessment of the implications of the structures is not made. In any case it is clear from photographs made by the Enforcement Officer on 9th July 2020 that the extensions were not present, thus at this time the structures remain unauthorised as the 4/10-year immunity time periods have not passed.

**Whether the 3 mobile homes can be considered as a single dwelling.**

The applicant’s claim that the 3 units are now considered a single dwelling is contested by the LPA. The main evidence in support of the single dwelling use is that the caravans have been connected by the decking and that the applicant has resided on the site with family members. The submitted evidence is unclear on how other than by virtue of being connected by the decking each unit operated collectively as a single dwelling. One would expect that in order for the 3 units to be considered as a

single dwelling the applicant and his relatives would share the basic domestic facilities across the units collectively. Whilst there was no ability to inspect each of the units and without evidence from the applicant it is expected that each unit contains the basic residential amenities to operate as a self-contained unit (this would include bedroom/s, bathroom, kitchen and living room). As such, in light of the lack of detailed evidence on how the 3 units were used as a single dwelling, it is considered that each unit, due to its nature, could easily be used independently from each other. In theory, the occupiers of each unit could live and enjoy the residential amenities (eg. for hygiene, eating meals or enjoyment purposes) from inside of each unit without the need for use of the other units. It is accepted that the connecting decking and the curtilage around the 3 units is not strictly demarcated for each mobile home however such shared/communal arrangement does not prevent the units being used independently.

Consequently, it is deemed that the 3-units, by virtue of simply being connected by the decking, would not constitute use as a single dwelling.

**Whether the breach has occurred for sufficient time in order to be considered immune.**

Finally, given that it is considered that the 3 units do not constitute a single dwellinghouse, the periods of time for which the applicant and his relatives resided on the site would not be sufficient to render the development immune from enforcement action. This is because each unit should be assessed separately. Whilst it is considered that the 10-year rule should apply, it is not contested that the applicant has resided on the site in excess of 4-years. However, it is clear from the evidence that his relatives (two daughters and son-in-law) have only resided on the site since December 2020 and January 2021 which currently does not exceed the 4- or 10-year rule. There is no evidence (other than the claimed connection of the caravans via decking) to demonstrate how the applicant when residing on site on his own used the 3 separate units as a single dwellinghouse.

On that basis, in addition to the earlier assessment of the evidence on the other main issues, in a hypothetical scenario where the 3 units were to be considered as a single dwelling, there would remain a lack of evidence to demonstrate how the independent units formed a single dwelling house providing that for a period of time the site was occupied by only one person.

**Other matters**

It is noted that the supplied site location plan is inaccurate in respect of orientation of the caravans and not showing the decking around them however, given that the application is being refused a revision to the location plans has not been sought.

**Conclusion**

In conclusion, the three main issues have been considered as above in sequence with the conclusion on one having implications to the consideration of the next. Bringing all of the issues together, as per the above assessment of the evidence, on

the balance of probabilities the application is recommended for refusal for the following reasons.

The existing 3 mobile homes are each compliant with the definition of a caravan as set out in Section 13 of the Caravan Sites Act 1968 due to meeting the size criteria, the movability test and being designed for human habitation. Consequently, the caravans form 3 separate units capable of independent occupation, and as a result the development is considered to constitute the use of land rather than operational development as a single dwelling. The decking and more recent timber-clad structures adjoining the caravans are considered to have insufficient permanence, and remain separate from the caravans themselves, such that they do not remove the caravans from the legal definition, and do not allow the three to be considered as one residential unit. Therefore, in accordance with Section 171B (3) of the Act, the 10-year enforcement immunity period (relevant period) applies where there is insufficient evidence to demonstrate that the breach has occurred in excess of the relevant period.