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2<sup>nd</sup> May 2019

## **Portacabin South of George Hill Road**

Dear Mrs. Burford,

I am writing in response to your letter of the 23rd. I was somewhat surprised to receive your letter under the circumstances, threatening enforcement action, when the status of the containers in question has not been raised over the past 3 1/2 years and specially as the matter of cabins on this land has been subject to investigation repeatedly in the past

My tenants offer a training facility for mostly young adults to learn how to handle their motorcycles safely in an approved location, close to urban centres with very high rates of social deprivation. The container/portacabin provides necessary storage and shelter ancillary to this use. The operation of the training school would be put in jeopardy by the forced removal of these very basic ancillary facilities. As such, there does not seem to be any material public benefit from serving any enforcement notice requiring the removal of what amount to temporary containers.

I am aware that the permission granted for the motor cycle training school on the hardstanding in 2015 is for a change of use only. I also noted the informative with respect to permanent buildings and structures. This was as discussed and agreed with Emma Fibbens in my email to her of the 1<sup>st</sup> Feb 2015.

The permission does not grant any permission for the construction of any new buildings or structures or any other works. Such works, if needed, would require additional appropriate express consent. This is a simple self-evident 'informative' statement. Such an application is, therefore, not precluded and should be judged on its own merits at such time that it is applied for.

There is no suggestion, however, within the decision notice and conditions that it removes permitted development rights, beyond not permitting other D1 uses on the site, nor does it preclude temporary buildings or structures to provide shelter or storage in appropriate moveable portacabins, trailers, containers and portaloos

### **Status of containers/cabins**

It is submitted that the portacabin/containers in question are **not operational development** nor could they be described as an 'office', 'building' or other permanent structure that would require planning permission. The portacabin and container are not secured to the ground and have no electricity, heating, lighting, telephone, water or sewerage connections they are not fixed or 'built' in situ, but merely 'parked'. They are provided as a storage and staff shelter area, ancillary to the lawful use of the land. They have also in no way resulted in a material

change of use of the permitted use of the land and these or similar containers have been in this location for many years-

The initial case that set the precedent for determining operation development was *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co 1949* it ruled that there were three tests to be made of a construction for building operations

- (a) whether its size was such that normally it would have to be built on site rather than brought to the site ready made;
- (b) whether the construction suggested some degree of permanence meaning it could only be removed by pulling down or taking to pieces, and
- (c) whether the construction was physically attached to the ground.

Case law and Inspectors decisions since that time has continued in this vein with Inspectors finding that ancillary portacabins that are not attached to the ground or serviced in anyway did not involve built development especially where they are ancillary to the permitted use of the land and did not trigger a material change in the use of the land. Where portacabins were not connected to the ground or any services and are capable of being moved, even if they have not been moved for a considerable time, there is still considered in Inspectors decisions to be no operational development.

The tests are size, permanence and physical attachment. In this instance the units were relocated here and not constructed or put together onsite, they can be removed and they have not physical attachments to the ground or utilities. Therefore, they are not operation development. As they are ancillary to a permitted use they also do not result in a material change of use of this site.

### **Site history**

You may not be aware that this exact complaint was investigated during the planning review of 2006/7. The same complaint about a similar green portacabin in the nursery area was investigated by S. Albon in 2006- its use then did not breach the terms of the planning consent. In his letter, addressing the range of complaints raised at that time he states: -

*'The Green Portakabin that is currently located near the polytunnels within the nursery area is used for horticultural purposes, as a staff area. The siting of this small Portakabin, in relation to the use of the horticultural area, does not require the benefit of planning consent.'*

It was recognised in 2006 that all employers have a statutory duty to provide their staff with such facilities, and that 'portacabins' used for this purpose, are ancillary to the lawful use of the land , so do 'not require the benefit of planning consent' -

It should also be recognised that, in the same letter, of Mr. Albon's of 2006, that some of the items referred to in the list of items stored on this site in 2006 were a portacabin / site office, and a caravan. The portacabin was being used on the farm in 1985, and was relocated here in 1996 along with the other unsold items from my farm sale. We did clear most of this

machinery at Mr. Albon's recommendation in 2006-7, but not the portakabin - which remained in use for secure storage until 2015, when it was replaced, when the site was prepared for the current tenants, with the portacabin now in situ. In summary, this area has been used for storage and parking of equipment, including a portacabin, continuously since 1996. Mr. Albon confirmed this was permitted here in 2006 and this is also explained in my letter to Mrs. Fibbens of 1<sup>st</sup> Feb. 2015.

Under the terms of the 2006/7 planning review, any complaint received was not going to be followed up if it was thought to be a repeat of an old previously determined allegation. As I have shown the provision of portacabins and portaloos as field shelter / staff rest rooms has **been** raised and investigated previously. The independent consultant at the time said the Council should have better record keeping so as to be better able to check future complaints against past ones,.

I clearly explained all this to Mrs. Fibbens in my email of 1st February 2015, before the determination of the application. The application was granted for a change of use. That application met with full approval and no objections from statutory consultees or members of the public and complied with all countryside and green wedge policies. The application, together with many others followed lengthy negotiation with TDC between 2005 and 2013, about the future of the farm. It was agreed that rather than a wholesale residential re-development of the 3.7ha of urban land (an allocation of 100 dwellings was made in 2007), and the relocation of agricultural service areas into the green wedge, that instead this prime edge of town site would continue to be developed for existing mixed uses including garden centre, nursery, farming, tourism, leisure and business centre use. Numerous planning permissions have been granted on this basis and there have been no enforcement issues over this period. The motor cycle training school adds a D1 class (educational/ gallery) use to the operation of the site as a mixed-use community hub providing an attractive setting for the enjoyment of these facilities by the public.

### **In conclusion**

The site is fully screened within my field grown nursery stock area; and given its location it is submitted that the cabin has no impact on any neighbouring householders. Acceptance of this container/portacabin does not challenge green wedge policies - the use of this area as a storage area for such items has been established for well over 20 years and no planning permission is being requested for the building of new permanent structures.

It should also be noted that objections have been made to the relevant countryside and green wedge policies in the submission draft local plan, to say that limited development ancillary to open air, leisure, training, tourism, community agricultural and environmental uses have the potential of enhancing the economic, amenity, ecological, and landscape value of the green wedges to the local community. The Inspector has already found the first of these policies not to comply with the NPPF and has requested modifications and the proposed Green Wedge policy is to be heard later this month.

The removal of the cabin to an alternative location is not a practical solution as it would not then be ancillary to the lawful use of the land and would not serve its purpose as a staff shelter.

This issue was fully explored and resolved on a nearly identical cabin on this holding in 2006. There has also been a cabin/site office on this immediate site for 20+ years.

Therefore, I formally request that time be allowed for me to apply for a Certificate of Lawful Development to determine if this is development or not and if it does or does not require planning permission.

I would, therefore, ask you not to take enforcement action until either agreement is reached or applications have been duly followed through to a conclusion.

Yours sincerely

William Friend

On behalf of Paul Duval of South East Motor Cycle Training.