

## Introduction

This paper represents a response to the report of the Head of Regeneration and Planning in the matter of proposed enforcement and other actions at Gibraltar Farm, Silverdale.

Members are respectfully advised that nothing in this report is intended to be confrontational or provocative. However, I have advised my client that it is necessary to inform the Council of how he has been advised to react to either the service of enforcement notices or the removal of his permitted development rights. This being in order that Committee will then have all the facts and be in a position to arrive at a balanced and proportionate decision.

## The Site

Gibraltar Farm is sited off Lindeth Road in the settlement of Silverdale and comprises 80 acres of grassland, associated agricultural buildings, a caravan site and a tent camping field. The main vehicular access to the land is situated close to the junction of Hollins Lane and Lindeth Road.

## Background

My client Mr James Burrow is the third generation of the Burrow family to have occupied and worked on Gibraltar Farm. He began working on the holding at the age of 16 when he left school in 1990. At that time the tenant farmer was Mr Frank Burrow, James' uncle who was responsible for the establishment of both the caravan and tent camping sites on the farm in or around the 1960's. During Frank Burrow's tenure the farm was owned by members of the wider Burrow family to whom he paid rent. Frank retired in 2007 at which time the owners determined that the farm and accompanying land should be sold with my client being offered first refusal. With financial assistance from the bank he was able to purchase the agricultural land and operational farm buildings and has continued to maintain viability of the business, which includes a dairy herd together with sheep and beef production. The caravan site and tent camping facilities are referred to in the next section.

It should be noted that James Burrow and his family do not occupy Gibraltar Farm House itself. Due to its extremely high price at the time of the disposal of the land by the wider family, my client was not in a financial position to acquire the property which has now fallen into private ownership with no connection with the farm whatsoever.

### Relevant History

At the time my client purchased Gibraltar Farm in 2007, he was aware that both the caravan site (to the extent that it exists today) and tent camping field had been in existence for as long as he could remember and in fact in excess of 40 years. He therefore purchased both (at full market value) in good faith truly believing that there were no outstanding issues in terms of legislative requirements. With hindsight this could be perceived as somewhat naïve but as I am sure Members will be aware, errors of this nature are not uncommon in the planning world. It was simply a case of it being inconceivable to a lay person that an activity could have existed for so long if it were not legitimate.

In late 2007 the Council were asked to get involved by a number of local residents following changes to the way the caravan site was operated which was perceived by the objectors as being an intensification of the use and an expansion of the caravan site as a whole. This was primarily brought about by the introduction of seasonal pitches, the installation of hard standings and the provision of electrical hook up boxes. On investigation the Council discovered that the original planning permission for a caravan site granted in 1976 was limited to 15 caravans in an area to the south of the existing site as shown on the plan accompanying Mr Dobsons report. In the event an application for lawfulness (09/00704/ELDC) was submitted for use of the entire site as it exists today. A certificate was issued for an increase of vans and extension of season on the original site but the use of the remaining land was not accepted due to the Councils view that there was insufficient evidence to support the application. In 2010 a further application (10/00253/ELDC) was submitted with a more supportive and comprehensive evidence base. A certificate was issued allowing the use of the wider site but with an attempt to limit the numbers of caravans on the extended area to the north of the original site. It was during the

process of seeking Counsels advice in preparation for an appeal that a flaw was discovered in the Certificate of Lawfulness. I do not feel there is a need to go into the specific details of this particular element of the case as Members will no doubt be familiar with the facts in that respect. However, I would briefly offer my clients reasons (which he based on legal advice) as to the method adopted to achieve a fully lawful use of the caravan site. I do so in the hope that it dispels the allegations of devious or underhand practice to obtain a certificate of lawfulness which have been levelled at him in the past.

Counsels advice at the time was that the decision on the second application (10/00253/ELDC), even if it could have been imposed as drafted, required scrutiny given that there was no indication as to how the Council had arrived at the numbers given within it. It was also considered that the evidence submitted with the application was of a weight and standard to more than adequately demonstrate a case for lawfulness and that the evidence provided by objectors appeared to have been accepted without question despite containing, in Counsels opinion, obvious errors and speculative embellishments. The situation between my client and some of the objectors was becoming intolerable with defamatory clandestine mail shots being undertaken throughout the village and indeed an attempt to secretly tape record my client following a verbal attack deliberately designed to antagonise him. My clients advisors were mindful that for a determination by the Inspectorate the matter would have had to go before a Public Inquiry, which would have resulted in the calling of very large numbers of witnesses by both sides resulting in the case taking several days to complete producing an unpredictable level of conflicting evidence. It was therefore the opinion of Counsel and my clients Planning Solicitor that under all the circumstances it would be extremely difficult for Mr Burrow to receive a fair hearing notwithstanding our collective confidence that the reality of the situation was that the lawfulness case was in reality beyond doubt. It was therefore more in the interests of justice and fairness that the advice to proceed via a Judicial Review was given and accepted.

#### Current Situation

Following the resolution of the lawfulness issues relating to the caravan site, a site license was applied for. Notwithstanding the fact that the lawful use certificate was unrestricted with regard to the number of caravans permitted on the site, that the capacity of the field is around 80 vans and historically that up to 75 vans were regularly on site during summer weekends, bank and school holidays, my client chose to apply for 60 vans only. This was of course a commercially considered decision in that an uncramped site would be more attractive to discerning caravanners leading to a more affluent, regular and reliable customer base with the added bonus of there being little or no bad behaviour which had been a problem in the past.

The terms of the site license statutorily required a full upgrading of facilities on the site and this resulted in the building of a brand new toilet/shower block incorporating chemical toilet and grey waste disposal points, washing up and laundry facilities. As a consequence of providing the new building, a waste digester has also had to be installed, which was undertaken in consultation with the Environment Agency and a suitably qualified drainage engineer. The total costs of these works was in excess of £350,000.

A new license has also been obtained for the tent camping areas which again my client voluntarily restricted to 60 pitches in order to maintain an attractive ambience and a sense of space for campers.

#### Gibraltar Farms Contribution to the Local Economy and Maintenance of Important Features of the AONB

It is widely acknowledged by retail, service and leisure businesses in and around Silverdale that Gibraltar Farm is a major provider of income and as such strongly supports the local economy. It is common for small township businesses to be able to survive against the current financial downturn where there is a strong tourism input providing additional income to tide proprietors over for the winter when trade is mainly local. I noted with some sadness that the Royal Hotel in the centre of Silverdale has not in fact survived and its deteriorating condition is already seriously

impacting on the street scene. It does however stand as a potential warning for the future. Whilst economic factors are not in themselves the sole determining factor in decision making they carry significant weight and the government are well published in the context of the efforts required to restart the economy nationally.

The incomes from the tent camping and caravan sites at Gibraltar Farm are predominantly used for the repayment of the bank financing of both the mortgage on the farm and sites and the recent improvements to facilities. Collectively these sums amount to £1.2 million. Therefore the leisure elements of the business represent diversification of the farming enterprise and indeed have been vital in supporting the agricultural activities through some very difficult times. It is the continued farming of the land that ensures the maintenance of the visual attractions of the area including dry stone walls, forestry maintenance, hedgerow protection and an opportunity to observe and engage with livestock.

There has to be a balance between the effects of tourism and the benefits it provides. What is of the greatest importance in this case is that the planning system is not used in such a way as it prevents my client from servicing his debts (of which a third were incurred as a result of statutorily having to provide the new facilities on the site to comply with site licensing requirements).

I would therefore respectfully request that Members consider these points when coming to a decision.

### Issues

#### Seasonal Pitches

Returning to the issue of perceived intensification and expansion of the site I would refer to the introduction of seasonal pitches on the hill to the north of the track. Seasonal pitches are offered on most sites nationally and they guarantee a certain level of income in the event of a poor summer in terms of weather conditions. Indeed I recently noticed a banner sign on the main approach road to Carnforth (from the Morecambe side) advertising winter seasonal pitches, which is now also common as

sites obtain permissions to extend their seasons. They have been introduced gradually by my clients since 2007. It would not be economically viable to utilise all available pitches for this purpose as the income is far less than pitches being taken on a nightly basis. It is therefore necessary for each business to find their own balance to provide a limited but guaranteed income as referred to above as dictated by their individual financial commitments. In the case of Gibraltar Farm there are currently 30 seasonal pitches which represent the norm for a site of this size.

Inevitably, many of the customers signing up for a seasonal pitch wish to have a choice as to where they are to site their caravan. At Gibraltar Farm the hill to the north of the track was historically the most popular pitch choice due to the impressive views across the Bay. However, customer expectations have changed over the years and in particular with regard to the provision of electrical hook ups. The hill pitches, up until relatively recently did not have such a facility and therefore the take up of pitches in this area fell off to a certain degree as demand for better facilities increased. The commencement of their installation coincided with the complaints received by the Council in 2007/8 as those pitches fitted with electricity were taken up by season pitch holders. It became clear that the objectors had interpreted the introduction of seasonal pitches on the hill as being in some way material in planning terms which of course it was not as the entire site has a lawful use for the siting of touring caravans.

At a recent meeting with Mr Dobson, it was proposed that my client enter into an agreement with the Council to cease the use of the hill for the provision of seasonal pitches. Following consideration and consultation with patrons of the caravan site, issues relating to accessibility became apparent. The difficulty would be that the majority of pitches between the track adjacent to the hill and the new toilet block are used for nightly pitch lets and are preferred by regular customers who have disabilities or are simply not as mobile as they used to be. These pitches are close to the toilet block, fresh water taps and chemical/grey waste disposal points and on level ground. These pitches would of course be lost to provide for season pitch holders moved off the hill which would then have to accommodate visiting caravan owners. A number of those latter customers have indicated that they would be unable to physically pull/carry water and waste containers over the distance and up

the incline of the hill itself. On this basis my client was regrettably unable to agree to Mr Dobsons proposal and in particular as he had been advised that there is sufficient appeal documentation to strongly suggest that any attempt to prevent part of the site being used for seasonal pitches would fail.

In the past it was not unusual for a LPA to impose length of occupancy conditions when granting new permissions for caravan sites. This was primarily to prevent units being used for permanent residential occupation. However, attitudes to tourism have changed and longer seasons and improvements to leisure facilities generally have been and continue to be actively encouraged by successive governments. I would specifically refer to the publication "Planning for Tourism" which is effectively a policy directive and is given significant weight by Inspectors determining appeals. The document is clear that the public expectation is to have good quality holiday facilities available all year round and also recognises (in the context of caravans) that manufacturers have reacted by improving design and insulation to make them capable of winter use. The advice gives model conditions to overcome any concerns over unauthorised residential occupation which is in itself indicative of there being no planning objections to caravans being on site on a long stay basis providing they are used solely for holiday purposes. There are a number of appeal examples where older permissions have been subject to length of stay conditions and site owners have sought to have them removed and I have previously informed Mr Dobson of my findings and the cases referred to. The general theme is that such restrictions are considered to be unreasonable and unnecessary and a relevant point made by one Inspector is that where a permission or in this case a lawful use exists, then a pitch when vacated by one caravan can immediately be re-occupied by another *ad nauseam* throughout the season. There can therefore be no material difference between a constant turnover of caravans on a pitch and the use of it by a single holiday touring caravan on a seasonal pitch contract. I would also add for information that in a number of cases the appellant has been granted an award of costs on the grounds of unreasonable behaviour by the LPA involved.

Given that the current certificate of lawfulness does not in fact restrict the use to holiday occupation only (which again goes back to the drafting flaws), my client wishes to make it clear that there is no intention to permit residential use. Therefore,

as part of other considerations referred to in my conclusions and as a gesture of goodwill, I consider that for the future protection of the Councils position this could be remedied via formal agreement.

Mr Dobson has indicated that in his view the use of a pitch on a permanent basis is in fact materially different as it alters the character of a site. I respectfully disagree as this appears to be based on an assumption that a pitch would have periods when it was unoccupied and therefore be a less intensive use of the land. However, this is speculative as to the level of business on the site as a whole. The recent improvements to Gibraltar Farm have already seen an increase in bookings for next year (including for the winter period) and projections for the next 5 years suggest that this trend will continue. It is the aim of every caravan business to have every pitch occupied at all times and this is the legitimate goal at Gibraltar Farm. Therefore if nightly bookings increase as expected it is likely that the number of season pitches will be reduced in any case to cater for the demand.

I would take this opportunity to refer to the use of the term “static caravans” within Mr Dobsons report in the context of touring caravans becoming static caravans if sited on a seasonal pitch basis. This is misleading as there is a clear and accepted difference between the two based on their design and functionality. All caravans sited at Gibraltar Farm whether on a seasonal basis or not, remain touring caravans by description, which are capable of being legally towed on a public highway by a domestic vehicle. I would again draw Members attention to the Certificate of Lawfulness which describes the use as “use of land for a touring caravan site” which is precisely what the site is being used for, i.e. the siting of touring caravans. If the Council had felt that there was some way of preventing seasonal pitch use (which is not conceded) then, with respect, this should have been reflected in a properly drafted Certificate of Lawfulness.

### Hard Standings

My client undertook the installation of hard pitch standings in the genuine belief that there were no planning implications. I have advised accordingly and he apologises unreservedly in this connection.

The caravan site historically has suffered badly from excessive rain as it is prone to serious flooding. Not only cars but also caravans frequently get bogged down in bad weather requiring towing to more solid ground, usually by tractor. The hill is particularly affected and concerns were raised some time ago by customers because of potential damage to their vehicles. Hard standings have been installed at the lower level with the original intention of carrying out similar work on all pitches on the hill. This has been put on hold in the light of the Councils current involvement and the acceptance that planning permission will be required before proceeding further.

My client was aware of the installation of hard standing of the same design at Hollins Farm and these were approved by South Lakeland Council. My client was therefore somewhat surprised when there appeared to be objections to those at Gibraltar Farm. I have advised that there can be differences in policies and the interpretation of general planning principals between neighbouring LPA's but it has to be said that both sites are within the same AONB and I think it is reasonable to expect some consistency in at least that context. The hard standings at both sites use naturally occurring materials, i.e. limestone and this weathers over a relatively short period of time and generally blends into the landscape. After time the pitches are not unattractive at close range and can barely be seen from distance and appear far more natural than irregular shaped patches of brown, dead and dying grass which occurs when pitches are heavily used in the summer. The latter are much more prominent when viewed from a distance than integrated, natural, weathered limestone. They are essential to ensure the safe siting of caravans and represent an improvement to existing facilities which is supported by the Planning for Tourism document referred to earlier. I would also add that Mr Dobson acknowledges that there have been difficulties in persuading the Inspectorate to reject hard standings and indeed the LPA itself has recently approved the removal of a large landscaped area at Leighton Moss to provide more car parking facilities which is surfaced with limestone.

#### Use of Land for Tent Camping to the North of the Access Track

This area forms part of a larger field which has relatively recently been fenced effectively forming a northern containment boundary. Historically, prior to my clients purchase of Gibraltar Farm the entire field was used for camping on an overspill basis and, on request, also for organised groups such as Scouts, Duke of Edinburgh Award candidates and charitable providers for the disabled. A considerable amount of third party evidence was submitted to the Council in an attempt to support the case for lawfulness. However, Mr Dobson has rightly pointed out that agricultural subsidies have regularly been claimed on this specific area (which is not the case on the main tenting field or the caravan site). Whilst this was an inherited matter for my client when he purchased the farm I have his agreement to concede that the field was probably more of a mixed use for both agriculture and tent camping with varying levels of both activities over the years. The reduced fenced area now in use for tent camping has therefore not existed for 10 years solely for that purpose. Whilst a case could be made for lawfulness as a mixed use it will now be a more complicated appeal (inevitably at a Public Inquiry) with far more uncertainty of the outcome for both sides. Therefore, whilst retaining the option to appeal on this ground my advice to Mr Burrow is to consider exploring other ways of retaining the newly defined area for tent camping to which I will refer later.

#### Removal of Permitted Development Rights for Exempt Caravan Organisations

I can only assume that this proposal is based on a visual amenity objection as there are no noise or disturbance issues arising from the occupation of the land by exempt organisations (EO's). EO's are examples of the "purist" caravanners who seek out sites where like minded people can enjoy secluded areas and shared interests together. Traditionally they require no electrical hook ups relying on batteries and more recently small solar panels for power. Portable toilets are usually provided for larger groups but generally they are self sufficient. Members generally comprise middle aged to elderly members and contrary to errors by some objectors never, under any circumstances, have any of these groups been involved in events requiring music or alcohol licenses whilst staying at Gibraltar Farm.

There were 4 visits by EO's in 2011 which is about average these days. Such groups are getting rarer (currently between 450 and 500 nationally according to Natural

England figures) due to the modern expectation of facilities such as electrical hook ups, toilets and showers. However, the income from these visits is not insignificant and makes a valuable contribution to finance repayments.

#### Objections to Licensing Committee for the Annual Bikers Rally

For Members information and to avoid doubt I would advise that beyond the provision of the site and the maintenance of hygiene facilities, my client has no involvement with the Bikers Rally. The group are self organising obtaining both music and alcohol licenses themselves. The rally has been an annual event for a number of years and the group have raised a considerable amount of money for national charities during that time. However, it is acknowledged that some local residents consider that the musical events over the 2 nights of their stay are excessively loud (though they are monitored and are kept within the limits of the legal requirements). On the other hand the events are popular with other Silverdale residents who are permitted to attend for a small contribution to costs. I would also add that outdoor concerts have annually been held at Leighton Hall (Classical Music Proms) and this year at Silverdale Cricket Club (Pop Bands). Both events are equally as loud as the music from the Bikers Rally and can be heard throughout most of Silverdale for their duration though I am not aware of any proposals to prevent these activities. In the circumstances I sincerely regret that I have to consider that there may be some prejudice against either the Bikers, Gibraltar Farm or indeed both! Nonetheless, if the event continues, my client is advised that he remain neutral on this issue and leave the matter in the hands of the organisers of the rally.

#### Removal of 28 Day Permitted Development (Temporary Use of Land) Rights

Whilst this is not currently a recommendation I note that Mr Dobson advises that in the event of objections to licensing failing (Bikers Rally) the removal of temporary use of land rights would have to be considered. I would ask Members to be aware that a landowner having an Article 4 Direction imposed upon him has a right to compensation. Whilst the intent would be to prevent the musical 2 days of the Bikers Rally each year, the removal would apply to the whole of the 28 days currently available to my client and compensation claims would be based on the potential

income for that whole period. Without prejudice and subject to a final figure being produced by a suitably qualified person I estimate that the sum would be in the region of £25,000 to £30,000 per annum payable in perpetuity for as long as the Direction remains in place. Clearly my client is advised that no objection or challenge be raised should members agree to this action in the future. The reality of course is that it is extremely unlikely that the Council could justify that level of outlay for such a small gain. I would suggest that there are other solutions to which I will refer in my conclusions.

### Conclusions

#### Enforcement – A Discretionary Power

Members will of course be aware that planning enforcement is a discretionary power and that a LPA is perfectly within its rights, acting in what it considers the public interest, to determine not to take formal action in respect of any perceived breach of planning control. In my view there are elements of this case where compromise and agreement is a perfectly feasible, legal and valid option. I have met with Mr Dobson in the past at which time we explored the possibilities of moving forward on this basis. Unfortunately we were unable to progress as we had hoped but having now read his report, which being in written form has allowed me additional time to consider the issues and obtain a more comprehensive understanding of what is, after all, a very complex situation, I have reviewed my initial advice to my client in that context.

#### Seasonal Pitches

My client has been advised that any enforcement action should be challenged on several grounds on the basis that seasonal pitch use is not materially different to the activities permitted by the certificate of Lawfulness, that such action would deprive him of essential income and that it would impact on accessibility for the disabled and infirm with the subsequent knock on effect of the social exclusion of those concerned. I have further advised my client that he should seek a full award of costs against the Council on the grounds of unreasonable behaviour.

I can readily understand that given the loose nature of the description of the lawful use in the issued Certificate there may be concerns that the site could be used for residential purposes in the future. Whilst my client has no such designs in this regard he has been advised, as part of other proposals of compromise referred to within this section, to enter into a formal agreement via a Section 106 Agreement to restrict the use for holiday purposes only.

### Hard Standings

In the context of the need to improve the ground conditions and indeed the customer experience generally at Gibraltar Farm my client is advised that the Council could, if Members are minded to approve enforcement in this respect, readily be challenged on the basis of unreasonably withholding planning consent for what are clearly essential and necessary operations.

### Use of Land for Tent Camping to the North of the Access Track

#### Bikers Rally

#### Exempt Caravan Organisations

As previously stated a claim for lawfulness on the tent camping area to the north of the track is likely to be an overly complex matter. Therefore my client is advised that, in the event of a compromise not being reached with the Council with regard to this and other contentious matters and an enforcement notice issued, a ground (a) (that planning permission should be granted) appeal should definitely be lodged against any enforcement notice and that a decision on whether to claim lawfulness made after further consideration at the time.

This use of this particular area has proved to be vitally important to my clients camping business. Not only does it cater for overspill during busy periods it also provides a quieter, segregated site for special interest, special needs and other groups many of who incorporate a degree of educational tutelage during the course of their stay. Having undertaken a cost/benefit exercise I conclude that both operationally and financially, this use has far more value than other more peripheral

activities. Therefore, my client is advised that there may be scope for entering into an agreement with the Council in an effort to retain this use (solely for tent use with no caravans or motor homes being permitted).

The proposal is that, via the Section 106 agreement referred to above, he voluntarily ceases all uses of his land for any events that require a public entertainment, i.e. music, license and, if considered necessary, limit the number of visits by exempt caravan organisations. The effects will be that Gibraltar Farm will no longer be a viable venue for the Bikers Rally and it will also provide the Council with the certainty (as opposed to the uncertainty of relying on objections to the licensing committee as proposed) that the remaining 25 days of my clients temporary use rights cannot be used for similar purposes. It will also totally extinguish any need to consider the removal of permitted development rights and the cost of doing so.

I have spoken to Natural England with regard to the process for removal of the right of exempt organisations to use specified areas and understand that the matter lies with the appropriate Secretary of State (DEFRA) once a publicity exercise has been undertaken. I would suggest that again there is uncertainty for both sides with regard to the outcome as clearly my client would also make representations on matters of significant financial loss causing hardship and denying access to the countryside. Therefore it is proposed to offer (again via the S106 agreement) a voluntary limit on uses of this nature whether this relate to the number of individual visits or the number of days usage in total per year.

#### Closing Statement

I am sure it is clear from this paper that it is imperative that my clients businesses succeed both on the agricultural and leisure sides of the fence in order to secure the future of Gibraltar Farm. My client is not the head of a faceless national company but a young man in his thirties with a wife and 2 young boys. He was born and brought up in Silverdale and has an infectious and incorrigible love and enthusiasm for his surroundings and his work. If he has fallen foul of the planning system he is certainly not the first to do so inadvertently and in good faith. He has sacrificed a great deal in order to finance the purchase of the farm and carry out improvements to facilities

and it will be many years before he and his wife will receive any significant financial benefit. The investment is more to ensure the viability of the families long term future and in particular to provide employment for his sons (and potentially others) in years to come. Although my clients accountant is currently happy with the balance between income and debt servicing, any loss of revenue could have catastrophic results. I would therefore ask Members to factor this in to their final decision and add that I would welcome being informed of any concerns or suggestions Committee may have in this or any other respect.

Glynn Burgin  
Planning Consultant  
Planning Law & Enforcement Specialist  
16<sup>th</sup> November 2012