Planning Services, Adur District Council

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ADUR DISTRICT COUNCIL

ADUR DISTRICT COUNCIL
PLANNING DIVISION
PLAN No. Ad0173/08
DATE RECEIVED 31 MAR 2008

Householder Application for Planning Permission for works or extension to a dwelling. Town and Country Planning Act 1990

Publication of planning applications on council web sites
Please note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application form and in supporting documents may be published on the council's website.
If any other information that is provided as part of the application which falls within the definition of personal data under the Data Protection Act and is not to be published on the council's website, please contact the council's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr First name: Joby Surname: Pannell

Company name:

Street address: Land to the East of Old Salts Farm Road
Old Salts Farm Road

Town/City: Lancing
County: West Sussex
Country: United Kingdom
Postcode: BN15 8JG

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (●) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: Mr First Name: Derek Surname: Copeman

Company name: Derek Copeman Architect

Street address: Unit 2
Riverside Yard
Albion Street

Town/City: Brighton
County: West Sussex
Country: United Kindom
Postcode: BN42 4AW

	Country Code	National Number	Extension Number
Telephone number:	44	01273 591822	
Mobile number:	44	07831 420639	
Fax number:	44	0870 0053518	

Email address: derek.copeman@btopenworld.com

3. Description of Proposed Works

Please describe the proposed works:
Locate Mobile Home on land in the sole ownership of a member of the "Gypsy" Community.

Has the work already been started without planning permission? ( ) Yes ( ) No
If Yes, please state when the works were started: 30/06/2007

Has the work already been completed without planning permission? (●) Yes ( ) No
If Yes, please state the date when the works were completed: 30/06/2007

4. Site Address Details

Full postal address of the site (including full postcode where available)

House: 0 Suffix:

House name: The Barn

Street address: Old Salts Farm Road

Town/City: LANCING

County: West Sussex

Postcode: BN15 8JG

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 519244

Northing: 104454

Description:

5. Pedestrian and Vehicle Access, Roads and Rights of Way

Is a new or altered vehicle access proposed to or from the public highway? ○ Yes ◉ No

Is a new or altered pedestrian access proposed to or from the public highway? ○ Yes ◉ No

Do the proposals require any diversions, extinguishment and/or creation of public rights of way? ○ Yes ◉ No

6. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? ◉ Yes ○ No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title: Mr First name: Keith Surname: Morgan

Reference:

Date: 21/11/2006

Details of the pre-application advice received:

Officer Advised that Adur Distrcit Council will not support an application for the Mobile Home unless the applicant can privide a supporting statement for "Special Circumstance" as defined in Green Belt Policy;

7. Trees and Hedges

Are there any trees or hedges on your own property or on adjoining properties which are within falling distance of your boundary? ○ Yes ◉ No

Will any trees or hedges need to be removed or pruned in order to carry out your proposal? ○ Yes ◉ No

8. Parking

Will the proposed works affect existing car parking arrangements? ○ Yes ◉ No

9. Council Employee / Member

Is the applicant or agent related to any member of staff or elected member of the council? ○ Yes ◉ No

10. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ◉ Yes ○ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

◉ The agent ○ The applicant ○ Other person

11. Materials

Please state what materials (including type, colour and name) are to be used externally (if applicable):

Walls - description:

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

Subject to design and specification of Mobile Home type;

11. Materials (continued)

Roof - description:

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

Subject to design and specification of Mobile Home type;

Windows - description:

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

Subject to design and specification of Mobile Home type;

Doors - description:

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

Subject to specification of Mobile Home type;

Boundary treatments - description:

Description of *existing* materials and finishes:

Existing Boundary formed as an extension of the natural hedge planting;

Description of *proposed* materials and finishes:

Existing planting to be re-inforced with infill planting to provide visual screen from Old Salts Farm Road;

Vehicle access and hard standing - description:

Description of *existing* materials and finishes:

Two Number existing Gateway entrances;

Description of *proposed* materials and finishes:

As Existing - no change;

Lighting - add description

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

N/A

Are you supplying additional information on submitted plan(s)/drawing(s)/design and access statement? (•) Yes ( ) No

If Yes, please state references for the plan(s)/drawing(s)/design and access statement:

750A - Site Plan (Ref: 750A-01B) - A4 Scale 1:1250;
750A - Block PLan (Ref: 750A-07D) - A4 Scale 1:500;
750A - Design & Access Statment (Ref: 750A- Design & Access Statment) A4 Document;

12. Certificates (Certificate A)

Certificate of Ownership - Certificate A

Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7

I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/ the applicant was the owner (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of any part of the land or building to which the application relates.

Title: Mr First name: Derek Surname: Copeman

Person role: Agent Declaration date: 28-02-2008 ☐ Declaration made

12. Certificates (Agricultural Holdings Certificate)

Agricultural Holding Certificate

Town and Country Planning (General Development Procedure) Order 1995 Certificate under Article 7

Agricultural Land Declaration - You Must Select Either A or B

(A) None of the land to which the application relates is, or is part of an agricultural holding. (•)

(B) I have/The applicant has given the requisite notice to every person other than myself/the applicant who, on the day 21 days before the date of this application, was a tenant of an agricultural holding on all or part of the land to which this application relates, as listed below: ( )

Title: Mr First Name: Derek Surname: Copeman

Person role: Agent *Declaration date:* 28-02-2008 ☐ Declaration Made

13. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. ☐

Date 31/03/2008

ADUR DISTRICT COUNCIL
PLANNING DIVISION
PLAN No. AA/0173/08
DATE RECEIVED 31 MAR 2008

DESIGN & ASSESS STATEMENT

FOR

PLANNING APPLICATION

at

LAND ADJACENT TO LICENSED CARAVAN AND CAMPING SITE OFF OLD SALTS FARM ROAD LANCING WEST SUSSEX

for

Mr & Mrs J. Pannell

Derek Copeman Architect
Unit 1, Riverside Yard
Albion Street
Southwick
Brighton BN42 4AW
Tel: (01273) 591822
Fax: (0870) 0053518

Date: 28th February 2008
Ref: 750/1.0/D&AS/DKC (A) v 1.0

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1.00 INTRODUCTION:

1.01 This statement is in support of Planning Application for the temporary location of a mobile home on the land adjacent to a licensed Touring Caravan and Camping site off Old Salts Farm Road, Lancing, West Sussex (See Appendix 1 & 2);

1.02 Further to instructions from my client Mr & Mrs J. Pannell we hereby give notice that we have submitted an further application following the decision by Adur District Council (ADC) issued on the 6th December 2006 refusing planning permission for temporary permission to locate a mobile home on the above site to provide 24 Hour on site security/management of a licensed Touring Caravan and Camping Site;

1.03 In Appendix 1 of this statement I have attached a site Location Plan covering the land owned and registered solely to Mr J. Pannell;

1.04 In Appendix 2 of this statement I have attached a Block Plan showing the proposed location of the Mobile home to be used as the principle residence of Mr & Mrs J. Pannell and there family;

2.00 PREVIOUS PLANNING HISTORY:

2.01 My client's have obtained a license (Certified Site No: 198/084) issued by the Camping and Caravanning Club to operate the site adjoining the actual application site as a Touring Caravan and Camping site and the limitations of this license are as follows:-

1) The number of touring caravans is limited to 5 (Five) at any one time;

2) At any time there are no limits of the number of tents that can be accommodated on the site;

3) No visitor to the site either in a touring caravan or tent can remain on the site for a period exceeding 28 Days;

4) All pitches must be separated by a minimum of 6 (Six) metres; this distance to be measured between adjoining pitches measured from any edge of a touring caravan (including any awning) or in the case of a tent the outer edge of the tent structure and the adjoining pitch;

5) The total individual pitch accommodation area is 36.6 Sq M, a car may be parked within the 6 Metre separation strip provided 3 Metres clear space is maintained between the outside edge of the vehicle and the adjacent accommodation area;

2.02 On 1st July 2003 Adur District Council gave notice that planning permission had been granted for the construction of a cesspool and storage shed in connection with the use of the site as a licensed Touring Caravan and Camping Site. This consent was restricted by 3 conditions:-

i) The temporary consent expires on the 30th June 2008 or at any time after the Camping and Caravan Club license expires (whichever is sooner);

ii) The approved development to be constructed in accordance with the approved drawings;

iii) The approved development must only be used for purposes incidental to the use of the site as a licensed Touring Caravan and Camping Site;

This application was approved under Adur District Council Planning Ref: L/83/03/TP.

3.00 APPLICATION (REF: ADC/0360/06):

3.01 On the 21st September 2006 a retrospective application was submitted to Adur District Council for the temporary location of a mobile home on a section of site immediately adjoining the site licensed as a Touring Caravan and Camping Site. The purpose of this application was to enable the applicant to continue to provide 24 Hour security and management of the Touring Caravan and Camping Site after ADC issued notice of enforcement action to remove the applicant's mobile home form the site;

3.02 The applicant was notified that this application was refused on the 6th December 2006;

3.03 The application site is within an open area of land between the established residential areas of Shoreham and Lancing; this open area of land is designated as the "Strategic Gap" within the West Sussex Structure Plan (LOC2, CH1, CH3 & DEV1);

3.04 The "Strategic Gap" is also controlled within the Adur District Local Plan (AG1, AC4, AH11 and AP3);

3.05 Under the requirements of the West Sussex District Plan policy LOC2 the applicant set out grounds for "Exceptional Circumstances" in that to preserve and control the conditions of the Licence it is necessary to maintain a 24 Hour presence on the site for security reasons and to prevent unauthorised access to the site. Due to the remote and secluded nature of the site it is necessary to control the use of the site to prevent more caravans than permitted under the Licence issued by the Camping and Caravanning Club (limiting the number of touring caravans to 5 (five) at any one time);

3.06 In the 12 Months following the issue of the Caravan and Camping Club licence there were several occasions where the conditions of the licence were unavoidably broken as a result of unauthorised visitors pulling onto the site without permission overnight; in all cases the applicant was only able to evict the unauthorised visitors after the event due to the fact that there was no formal reception point on the site overnight. As a direct result of these breaches the applicant moved his personal mobile home onto the site to ensure that there were no further breaches and since this time there have been no further breaches of the conditions of the Licence;

3.07 In the submission issued to the local authority the following grounds for "Exceptional Circumstances" were made together with justifications and specific examples:-

a) During periods where users have located their caravans on site and vacated the site during the day to visit the local area, the prevailing winds could have caused significant damage to property had it not been for my client's timely intervention;

4.02 The applicant has now given us instructions to prepare a new application and specifically wishes his "Gypsy Status" to be taken into consideration in the consideration of this application and is able to provide, on request, supporting documentation in support of his claim to be considered a legitimate member of the Travelling Community;

4.03 As the applicant now wishes his "Gypsy Status" to be taken into consideration this application is for the right to settle on land owned by a member of the Travelling Community and is therefore in support of Government Policy requiring all local authorities to provide sufficient land to meet the demands of the Traveling Community (where true Gypsy Bloodline can be evidenced); in the cast of Adur District Council there is clearly insufficient land has been allocated as can be evidenced by my client's circumstances in that Mr & Mrs Pannell have had their names added to the available "Gypsy Sites" in the area for the past 24 Months and as yet there have been no available pitches in the existing identified sites within the Borough;

4.04 The application site and the adjoining Camping & Caravan site is in the sole ownership of the Applicant and neither the applicant or his spouse have any legal interest in any of the adjoining properties therefore the licensed Caravan & Camping site can not be monitored from any of the adjoining properties;

4.05 All of the boundaries to the section of site have been planted using fast growing hedge and tree species which will be maintained and within 2 full planting seasons the area of the site where it is proposed to locate the mobile home will be completely screened from all of the adjoining properties;

4.06 There is no alteration to the existing access arrangements to the site;

5.00 FLOOD RISK ASSESSMENT:

5.01 The application site and the adjoining Caravan & Camping site is located in on the edge of an area designated as Zone 3 by the Environment Agency and as such the site could be subject to a Low to Medium risk of flooding in the theoretical 100 Year Flood assessment; In the case of the Caravan Site as the applicant is on hand to manage the site and is computer literate he regularly monitors the weather forecast and will be on site to advise the patrons of the caravan site of the potential for flooding should a flood alert be issued by the Environment Agency;

5.02 In the consideration of the Flood Risk assessment we have surveyed the actual Datum levels on the edge of the area classified as Zone 3 and the proposed paved area on which the Mobile Home to be located on the site is 275mm below the spot levels on the edge of the area classified as Zone 3 by the Environment Agency; The living accommodation of the proposed Mobile Home is raised above the paved area by 500mm and therefore is topographically above the theoretical 100 year flood; also the mobile home is capable of being transported, given notice off the site in the event of periods of extreme rainfall leading to the issue of a flood alert;

b) At times the site is used by visitors either camping or caravanning to participate in the sport of windsurfing and as a result very valuable equipment is often left on site and my client has been able to question and refuse entry to unauthorised members of the public who may otherwise have had an opportunity to steel some of the equipment left on site (which is a problem the windsurfers have experienced at other sites along the South Coast;

c) On several occasions my client has been able to prevent members of the Traveling Community pulling onto the site. This would not have been possible had the applicant not been on site at the time of the unauthorised attempt to pull onto the site;

d) As the applicant is himself a member of the local Traveling Community as long as he is in residence of the site there will be no unauthorised use of the site by other members of the local Traveling Community as the Pannell family is well known and respected by the Sussex Traveling community;

3.08 In all of the situations listed in paragraph 3.06 of this statement the applicant has on several occasions had to act during the hours of darkness and this simply would have not been possible had he not been residing on the site;

3.09 At the time this application my client chose not to rely on his genuine Gypsy bloodline to justify the application in that he had hoped that the business case submitted in support of the application would be sufficient to form grounds for "Exceptional Circumstances" however this was not accepted by Adur District Council and the application was refused;

3.10 The applicant lodged an appeal against the local decision and the inspector upheld the local decision on the following grounds:-

i) The Proposed location of the Mobile Home fails to maintain the open character of the land;

ii) The grounds for Compelling Circumstances were note accepted;

iii) The site is not suitable for a Permanent Residential home;

iv) It would be possible to monitor the Caravan & Camping site from nearby residential properties;

v) The area is subject to Flooding and in the absence of a Flood Risk Assessment the Inspector ruled that the original application was incomplete;

4.00 DESIGN & ACCESS STATEMENT:

4.01 The proposed location of a Mobile Home on the site adjacent to the licensed Caravan & Camping site must be seen in the context of the permitted use of the site, at any one time up to five touring caravans can be located on the site together with an unlimited number of tents; in this context it is difficult to see how the character of the land is in any way affected by the location of the applicants mobile home;

5.03 There is a creek to the North and South of the Application site and this is the principle risk to flooding on the site. There is no record of any incidence resulting in significant flooding to the application site and we have indicated in the table under paragraph 5.04 the individual flood risk assessment of the Application Site;

5.04 APPLICATION SITE FLOOR RISK ASSESSMENT

Hazard/Threat Category: Severe Weather	Sub-Category: Flooding from the Creak to the North & South
General Flood Risk Assessment: Low/Medium	General Flood Risk Assessment: Low/Medium
Access Road Risk of Flooding: Low	Likelihood of Flooding at Application Site: Negligable

6.00 APPLICANT'S PERSONAL CIRCUMSTANCES:

6.01 The applicant is a member of the Sussex Traveling Community and has a "Gypsy" bloodline that is well known to the Local Planning Authority (Adur District Council) and as the land subject to this latest Planning Application and the adjoining site subject to the Licence issued by the Camping and Caravanning Club is in the sole ownership of the applicant has a right through his "Gypsy" bloodline to reside on the site in a Mobile Home;

6.02 At the time of this latest application the applicant was residing on the site in his Mobile Home and had stopped travelling to manage the adjoining Camping and Caravan Site to provide site security and to ensure that there were no breaches of the licence conditions. The Camping and Caravanning Club have carried out several inspections of the site and in all cases the records for the site were inspected and they can confirm that there have been no breaches of the licence conditions;

6.03 Since the applicant has resided on the site he has paid Council Tax promptly in the full amount requested. He has three dependants consisting of his wife and two young children. His wife has obtained employment in the local community and both children live with their parents in the mobile home and the entire family unit are under the care of West Sussex Health Authority. If they were forced to move off the site this family would become homeless and would need to be housed by the local authority due to the lack of a vacancy on the designated sites within the Borough;

6.04 The applicant has never lived in a conventional house and has no desire to do so (which is his right as a genuine member of the Travelling Community), the opportunity presented by this site offers considerable benefit to the local authority both from a planning perspective in that clearly unauthorised use of the Application Site and the adjoining Camping and Caravan site will be prevented which will protect the integrity of the policies to prevent unauthorised use of the "Strategic Gap"; also as the applicant's family has become settled in the area and is contributing to the community. This does present real grounds for "Exceptional Circumstances" under Policy LOC2 (c) of the West Sussex Local plan where a good case has been made for a clear benefit to maintain the social and economic well-being of the County;

6.05 The applicant under this latest application elected to pursue his rights as a "Gypsy" to reside on this site he is aware that if this appeal in unsuccessful this will be his only option to continue to reside on the site and to this end we have attached (Appendix 3) a guidance note concerning "Gypsy" rights which set out the grounds for a petition to the European Court of Human Rights should permission not be granted under this latest Planning Application;

7.00 CONCLUSION:

7.01 We believe that there are "Exceptional Circumstances" as required under policy LOC2 (c) of the West Sussex Local Plan that demonstrate that a consent for the applicant to reside on the application site;

7.03 If further control is required beyond the scope of a planning condition the applicant is further willing to enter into a Section 106 agreement or other such agreement as may be deemed necessary to prevent a subsequent Planning Application being granted for a permanent dwelling on the site;

7.04 The applicant has also obtained overwhelming support for his application from members of the local community and we have attached in Appendix 4 a copy of the petition from visitors to the site and members of the local community together with a letter from a member of the Camping and Caravanning Club who on hearing of the circumstances pertaining to this case felt the need to right a letter of support;

The HRA does not incorporate Article 13 of the Convention. Article 13 provides that people whose rights under the Convention have been breached should have the right to effective redress. The Government did not include Article 13 in the HRA, as it took the view that the HRA itself would meet the requirements of the article by giving people the right to take proceedings in the British courts if they considered that their Convention rights had been breached.

Taking proceedings under the Human Rights Act 1998

Someone who believes that a public authority has breached their Convention rights, or is proposing to, can bring court proceedings against the public authority. A person can also raise a breach of their Convention rights as a defence in any court proceedings against them. In either case the person must be a 'victim' of the breach or potential breach, that is, someone who is directly affected by it. (This is a requirement that has its origins in ECHR caselaw – see the section on 'Taking a case to the European Court of Human Rights' below):

Generally, a person bringing court proceedings against a public authority under the HRA will be seeking a declaration that the public authority has breached their Convention rights or is proposing to do so. If the breach is continuing they will also want an order that the public authority should stop acting in a way that breaches their Convention rights. They may also seek compensation, although the courts have made it clear that it is not always appropriate for them to award this.

When someone brings proceedings against a public authority for breach of their Convention rights, the public authority may be able to defend itself by saying that it had no choice but to act in the way that it did because it was required to do so by an Act of Parliament. Where this happens the most the person bringing the case may hope to achieve is a declaration of incompatibility.

In most cases the appropriate court proceedings to bring against a public authority under the HRA will be an application for judicial review. Court rules require an application for judicial review to be brought 'promptly' and in any event within three months of the decision or action being challenged. Where someone does not make an application for judicial review there is a one year time limit for starting proceedings.

Proceedings Against Private Individuals or Bodies

As private bodies and individuals are not required by the HRA to respect Convention rights, it is not possible to take proceedings under the HRA against them. This does not mean, however, that the HRA will not have an effect on court proceedings between private bodies or individuals. This is because the courts themselves are public authorities under the HRA and are also required to interpret existing laws and to develop the law in a way that is compatible with Convention rights.

Taking a case to the European Court of Human Rights

Even though the HRA has now come into force in the UK it is still possible to make an application to the ECHR. There are three key requirements that you must meet:

1. You must be a victim of a violation of one or more of the articles of the Convention. Generally, this means you must be directly affected by a breach of the Convention. In some cases it will be enough to show you are likely to be affected by a breach or that you belong to a group of people, some of whom are likely to be affected. For example, gay men were permitted to challenge laws that criminalized gay sex even though it was unlikely that the individual applicants would ever be prosecuted because the laws were rarely enforced.;

2. Before you make an application to the ECHR you must pursue any proceedings that you could take in the UK that are capable of providing you with an adequate remedy for the breach of your Convention rights. Now that the HRA is in force this will generally mean that you will have to take proceedings in the UK under the HRA. This may not be necessary, however, where it is clear that the best you could hope to achieve from taking proceedings under the HRA is a declaration of incompatibility;

3. You must make your application to the ECHR within six months of the conclusion of any court proceedings that you have taken in the UK that could have provided you with a remedy or, if there were no proceedings that it was reasonable to expect you to take, within six months of the event which gives rise to your application;

When you make an application to the ECHR you will be asked to complete one of the ECHR's application forms. However, it is not necessary to fill out one of these forms to meet the six month rule. All you need to do is to get a letter to the court within the six months setting out;

1. Your details (name, address and nationality);

2. The country against which you are making your application;

3. The facts that have given rise to your application.;

4. The article or articles of the Convention that you say have been breached;

You should send your letter to:

The Registrar European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France
Fax: 00 33 3 88 41 27 30

When it has received your letter the ECHR will send you one of its application forms to complete. If there is not enough space on the form you can set out your case in a longer document which you attach to the form. It is important that you submit your completed application form within any deadline set by the ECHR or, if no deadline is set, within a few weeks of receiving it. If you do not submit the form speedily you run the risk that the ECHR will decide that you have not met the six month deadline. If you cannot meet any deadline that is set you should contact the ECHR and try to agree an extended deadline.

Once the ECHR has acknowledged receipt of your application form it may be some time (months if not years) before you hear anything further.

At this stage the ECHR may rule your application inadmissible. The ECHR will not give reasons and there is no right of appeal. If your application is ruled inadmissible you will not be able to proceed with it.

If it is not ruled inadmissible at this stage, your application will be allocated to one of the ECHR's four sections. A panel of seven judges from that section will deal with the case. This panel will always include the judge appointed by the United Kingdom. Very significant cases may be dealt with by the ECHR's Grand Chamber. These cases are considered by a panel of seventeen judges. A case could be transferred to the Grand Chamber at any stage in the proceedings.

Your application will also be communicated to the Government at this stage, that is, the Government will be informed that you have made an application and will be invited to respond. You will be given an opportunity to respond to the Government's observations and there may be further exchanges of written representations.

The ECHR will then decide whether your application is admissible. It can rule your application inadmissible if you have failed to meet one of the three requirements set out above or if the ECHR considers that it is 'manifestly ill-founded', in other words, that is not arguable. If the ECHR finds your application inadmissible at this stage it will give reasons, but there is no right of appeal.

If the ECHR finds your application admissible it will then go on to decide whether there has been a breach of the Convention. The ECHR usually refers to this as considering the merits of the application. At this point you have the right to put in a claim for compensation. The ECHR calls this 'just satisfaction'. It should include a claim for legal expenses if you have incurred any. Your claim for just satisfaction should be sent to the ECHR within two months of the ECHR finding your application admissible. Both sides may make further representations before the ECHR decides on the merits of the application.

When the ECHR has made its decision on the merits of your application, you will be notified of the date on which its judgment will be made public. The judgment will be published on the ECHR's website on that day. If the ECHR finds that there has been a breach of your rights it may award you compensation although it does not always do so on the basis that its finding that there has been a breach of your rights is enough.

Once a section of the ECHR has made a final decision on the merits of an application, either party, the Government or the Applicant, can ask to have the application referred to the Grand Chamber. This is the only form of appeal that the ECHR's rules allow for. The Grand Chamber only rarely agrees to a referral. There is no appeal from a final decision made by the Grand Chamber.

Hearings

The ECHR deals with most cases without holding a hearing; it reaches its decisions on the basis of written representations made by the parties. When the ECHR does decide to hold a hearing this will usually take place before the ECHR has decided on the admissibility of the application, although it may also hold a hearing after an application has been found admissible if it has not already held one.

Legal representation

Although you can make an application to the ECHR yourself, it would be wise to get a lawyer experienced in ECHR proceedings to represent you. Most cases are not communicated to the Government (i.e. they are ruled inadmissible at an early stage) and having a lawyer present your arguments for you may help you get over this hurdle.

If the ECHR decides to hold a hearing after it has found your application admissible, the ECHR rules require you to be represented by a lawyer at that hearing unless the ECHR allows otherwise.

Legal Aid

The ECHR has a system of legal aid although the payments which a lawyer receives under the scheme are very low. You can apply for legal aid once your application has been communicated to the Government. It is particularly useful to have legal aid if the ECHR holds a hearing on your case, as legal aid will pay the cost of your and your lawyer's trip to Strasbourg. Eligibility for legal aid will depend on the Legal Services Commission accepting that you would be eligible for legal aid in this country.

If you are not eligible for legal aid, your lawyer may agree to represent you under a conditional fee agreement, that is, on the basis that they will only get paid if you win your case and get your legal costs paid by the Government. However, as very few applications to the ECHR are successful, your lawyer may be reluctant to take this risk. If you lose your case there is no possibility of you being ordered to pay the Government's legal costs.

APPENDIX 4

of suitable alternative sites, health issues or educational requirements of the Gypsies' and Travellers' children. In effect, the court's role was reduced to one of a 'rubber-stamp' as those matters were taken as previously considered and given effect by the local authority.

In allowing the appeal, the Court of Appeal held that considerations of hardship and availability of alternative sites was not 'entirely foreclosed' at the injunction stage and to ignore these issues would not be consistent with the Court's duty to act compatibly with the Convention.

The House of Lords dismissed the councils' appeal and recognised that the previous approach, even under domestic law, was 'too austere' and a more balanced approach was necessary (whether it pre-dated the HRA or not), as the previous approach seemed to suggest that even great hardship was irrelevant. Perhaps most significantly, the House of Lords held that the vulnerable position of Gypsies and Travellers as a minority group deserves more sympathetic attention than had previously been the case.

The European Convention on Human Rights

The preamble to the Human Rights Act 1998 (HRA) describes it as 'an Act to give greater effect to rights and freedoms guaranteed under the European Convention on Human Rights' (the Convention). To understand the HRA you need to know something about the history of the Convention.

The Convention was drafted after the Second World War. British lawyers and civil servants were heavily involved in its drafting. The United Kingdom (UK) signed up to the Convention in 1953 and was one of the first countries to do so. In all, 45 countries have now signed up to the Convention including most of the east European, former communist countries and several countries that were once part of the Soviet Union. The countries that have signed up to the Convention make up the Council of Europe. The Council of Europe is quite separate from the European Union.

The Convention is divided into 'articles'. Articles 2 to 14 set out the rights that are protected by the Convention. Over the years the Convention has been supplemented by a number of protocols that have been agreed by the Council of Europe. Some of the protocols just deal with procedural issues but some guarantee rights in addition to those included in the Convention. The UK has signed up to two of the protocols that guarantee additional rights (the First and Sixth Protocols) but not to the others (the Fourth, Seventh and Twelfth Protocols).

The European Court of Human Rights (ECHR) is the international court set up to interpret and apply the Convention. It is based in Strasbourg, France and is made up of judges nominated by each of the countries that are members of the Council of Europe. Since 1966 people have had the right to bring cases against the British Government in the ECHR. Over the years there have been many cases in which the ECHR has found that the UK has breached the Convention. One reason that there have been so many findings against the British Government is that there was no way that people could get redress for breach of their rights under the Convention in the British courts. This and the fact that taking a case to the ECHR can take several years were major factors in persuading the new Labour Government to pass the HRA shortly after they came to power in 1997. Many people believe that the HRA is one of the major achievements of this government.

Because the Convention is now over 50 years old some of the language that it uses is quite outdated. However, the ECHR has often stressed that the Convention is a 'living instrument'. This means that as society and attitudes change, the ECHR will change and develop the way in which it interprets the Convention. The ECHR will, however, still tend to follow the precedents set by earlier cases - where it does not it will make it clear why it is not doing so. It is therefore important to look at past decisions of the ECHR. Moreover, the HRA requires the courts in this country to take the ECHR's past decisions into account when deciding cases under the HRA. The ECHR now posts its decisions on the internet.

The Convention Rights

Not all the rights set out in the Convention and its Protocols are incorporated into British law by the Human Rights Act 1998. The HRA only incorporates the rights in Articles 2 to 12 and in Article 14 of the Convention, plus those in the First and Sixth Protocols. The incorporated rights are set out in the First Schedule to the HRA and are referred to as 'Convention rights'.

This decision seems to be unworkable in practice and in breach of the right to respect for private and family life, home and correspondence under Article 8 of the European Convention on Human Rights (the Convention). It also raises the question of whether other family members lose their Gypsy status when the 'bread winner' becomes ill and is unable to travel. The effect of the Court of Appeal's decision is that Mrs Berry and her children lose their Gypsy status solely because their husband or father has become seriously ill and is unable to travel.

Personal Circumstance & Need

Personal Circumstances

If a Gypsy or Traveller can establish 'Gypsy status' then he or she will have to produce some evidence to show that planning permission for a caravan site ought to be granted. In particular, it will be important to produce evidence of personal circumstances (for example, relating to the health of the family) and evidence of the need for a site.

Gypsies and Travellers' living on unauthorised encampments find it particularly difficult to educate their children. The need to consider the educational needs of children when deciding whether to grant planning permission for a site was recognised in *Basildon DC v SSETR* where the court stressed that the education needs of children are an important aspect of wider land use considerations in the provision of sites for Gypsies and Travellers and that there is considerable public interest in providing stable educational opportunities for Gypsy and Traveller children.

Need

In coming to a decision that balances the protection of the planning system alongside nomadic people's rights, account must be taken of 'need'. 'Need' in this context relates to two competing interests: the need for accommodation consistent with a nomadic lifestyle; and the need for the local authority to protect the environment.

The courts have held that the need for sites is an independent material consideration to be taken into account in arriving at decisions concerning sites for nomadic people. The issue of need has proved determinative in planning appeals before the Planning Inspectorate, as well as in the High Court when challenging or defending the Planning Inspectorate's decisions.

Conventional Housing

In *Clarke v The Secretary of State for the Environment, Transport and the Regions and Tunbridge Wells Borough Council* a planning inspector had taken into account the previous offer of conventional housing to a Gypsy or Traveller family when he made his planning decision. The family had found the offer unacceptable having never lived in a house in their lives. The High Court found that the decision breached the claimants' right to private and family life, home and correspondence under Article 8 of the Convention and stated:

If [an immutable antipathy to conventional housing] be established then, in my judgment, bricks and mortar, if offered, are unsuitable, just as would be the offer of a rat infested barn. It would be contrary to Articles 8 and 14 to expect such a person to accept conventional housing and to hold it against him or her that he has not accepted it, or is not prepared to accept it, even as a last resort factor.

The Court of Appeal upheld this decision.

The European Convention on Human Rights

In *South Buckinghamshire District Council v Porter* the claimants had been living in mobile homes on land that they occupied in breach of planning control. The courts had granted an injunction requiring them to move off site, with the threat of imprisonment for failure to comply.

At the heart of the appeal lay Article 8 of the Convention and the question of whether in these cases the interference was 'necessary in a democratic society', that is, whether the injunction answers a 'pressing social need' and, in particular, whether it was proportionate to the legitimate aim pursued.

In earlier cases it had been held that the court had no role to play in deciding whether an injunction was appropriate, nor could the court consider matters of hardship that would occur once the injunction was granted, nor the availability

Gypsy Rights

Before planning permission for a caravan site can be obtained, the applicant must establish that he or she falls within the statutory definition of Gypsy, that is, has Gypsy status.

The leading case on Gypsy status before the Human Rights Act 1998 (HRA) came into force was *R v South Hams District Council ex parte Gibb*. The Court of Appeal considered whether the applicants were Gypsies for the purposes of the former duty to provide caravan sites in the Caravan Sites Act 1968, which defined Gypsies as 'persons of a nomadic habit of life, whatever their race or origin.' The Court of Appeal found the following matters were relevant in deciding whether the applicants in question were statutory Gypsies:

- A tradition of travelling
- Travelling in a group
- Travelling with an economic purpose

The Court of Appeal decided that the definition of 'Gypsy' required a recognisable connection between the wandering or travelling and the way in which the persons concerned make or seek their livelihood. Persons, or individuals, who move from place to place merely as the fancy may take them and without any connection between the movement and their means of livelihood fall outside the statutory definition of 'Gypsy'.

Unfortunately, this judgment has often led to local planning authorities trying to 'prove' that the Gypsies and Travellers who live in their area are not statutory 'Gypsies' for the purpose of Circular 1/94.

The courts have also considered whether an individual can lose his or her Gypsy status, particularly in relation to cases where ill health has led to Gypsies or Travellers being unable to travel.

In *R v Shropshire CC ex parte Bungay* an aggrieved local resident who lived near a recently approved Gypsy site challenged the local authority's decision that a Gypsy family who had not travelled for 15 years because they were caring for their elderly and infirm parents were Gypsies. The judge held that a person could remain a Gypsy even if he or she did not travel, provided that his or her nomadism was held in abeyance and not abandoned.

In *O'Connor v the First Secretary of State and Bath & NE Somerset* a planning inspector had decided that the Traveller concerned was not a statutory Gypsy because she had become too ill to travel. The High Court decided that it was not enough to focus on the travelling currently being undertaken or likely to be undertaken in the future, but instead the following circumstances should be also considered:

- The person's history.
- The reasons for ceasing to travel.
- The person's future wishes and intentions to resume travelling when the reasons for settling have ceased to apply.
- The person's attitude to living in a caravan rather than a conventional house.

In *Wrexham CBC v the National Assembly for Wales and Berry* a planning inspector had allowed a Planning Enforcement Appeal for a Gypsy family. However, his decision was challenged in the High Court on the ground that the elder breadwinner in the family, Mr Berry, was no longer a Gypsy because he had become too ill to continue to travel for work.

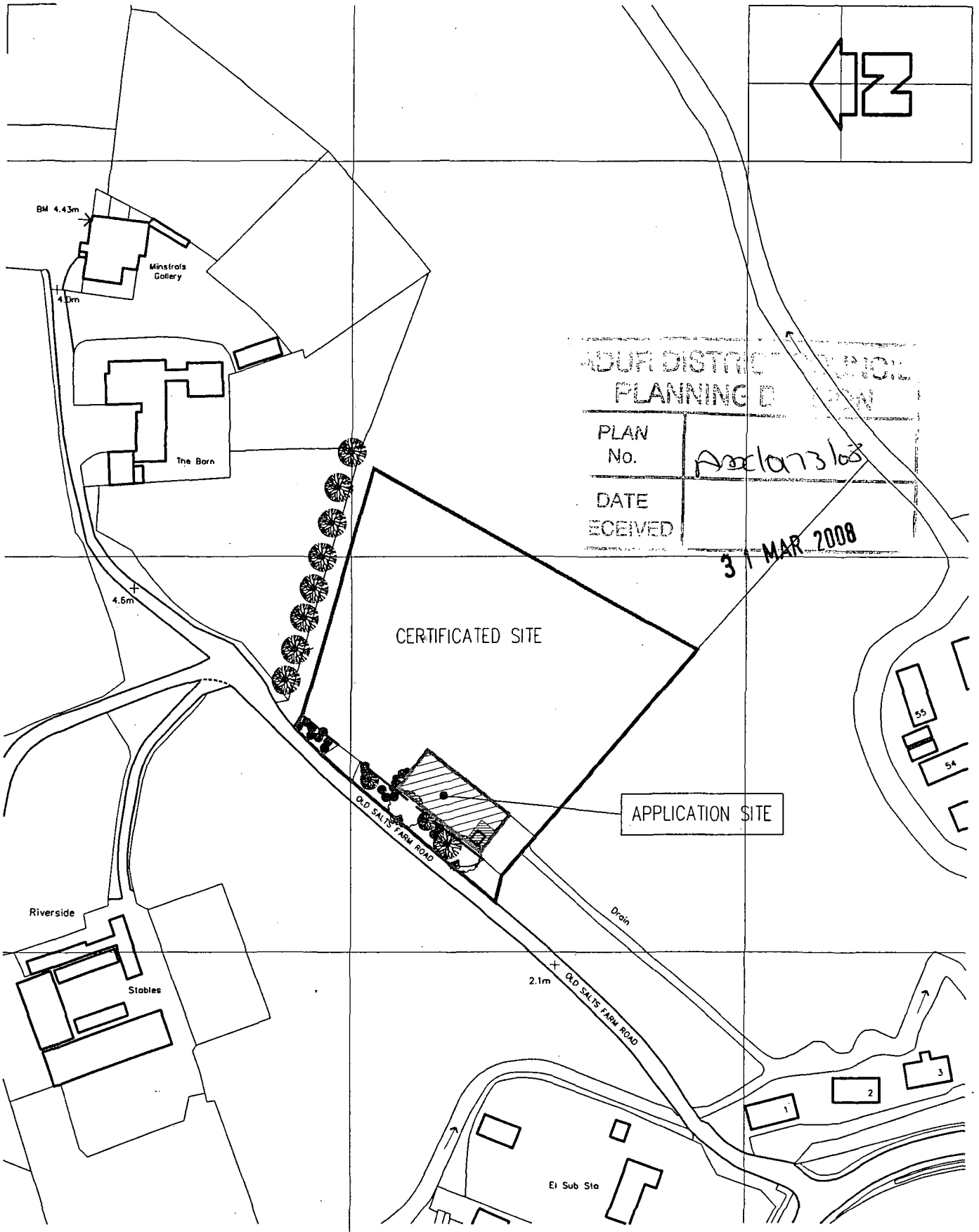
The High Court judge decided that he could not see anything in Gibb to suggest that, had the Court of Appeal been confronted with what might be described as a 'retired' Gypsy, it would have said that he or she was no longer a Gypsy because he or she had become too ill or too old to travel in order to search for work.

The Court of Appeal overturned the High Court decision because it found that there was no prospect of Mr Berry resuming a travelling life due to his chronic ill-health. The judges did accept however that a person may continue to have a 'nomadic habit of life' even though he or she is not travelling for the time being and may not do so for some considerable time, perhaps because of illness or the educational needs of his or her children, provided he or she has not abandoned a 'nomadic habit of life'.

Mr Berry appealed unsuccessfully to the House of Lords.

APPENDIX 3

APPENDIX 1



ADUR DISTRICT COUNCIL
PLANNING DEPARTMENT
PLAN No. Arc/0073/08
DATE RECEIVED 31 MAR 2008

SUBJECT TO SITE SURVEY AND ALL RELEVANT STATUTORY AUTHORITY APPROVALS.

Project: THE BARN – OLD SALTS FARM ROAD			Job No: 750A
Drawing: SITE LOCATION & KEY TO SITE PHOTOGRAPHS			Drg.No: 01B
Scale: 1:1250	Date: 10:08:2006	Drawn: DKC	CAD Ref: 750A-01B.dwg

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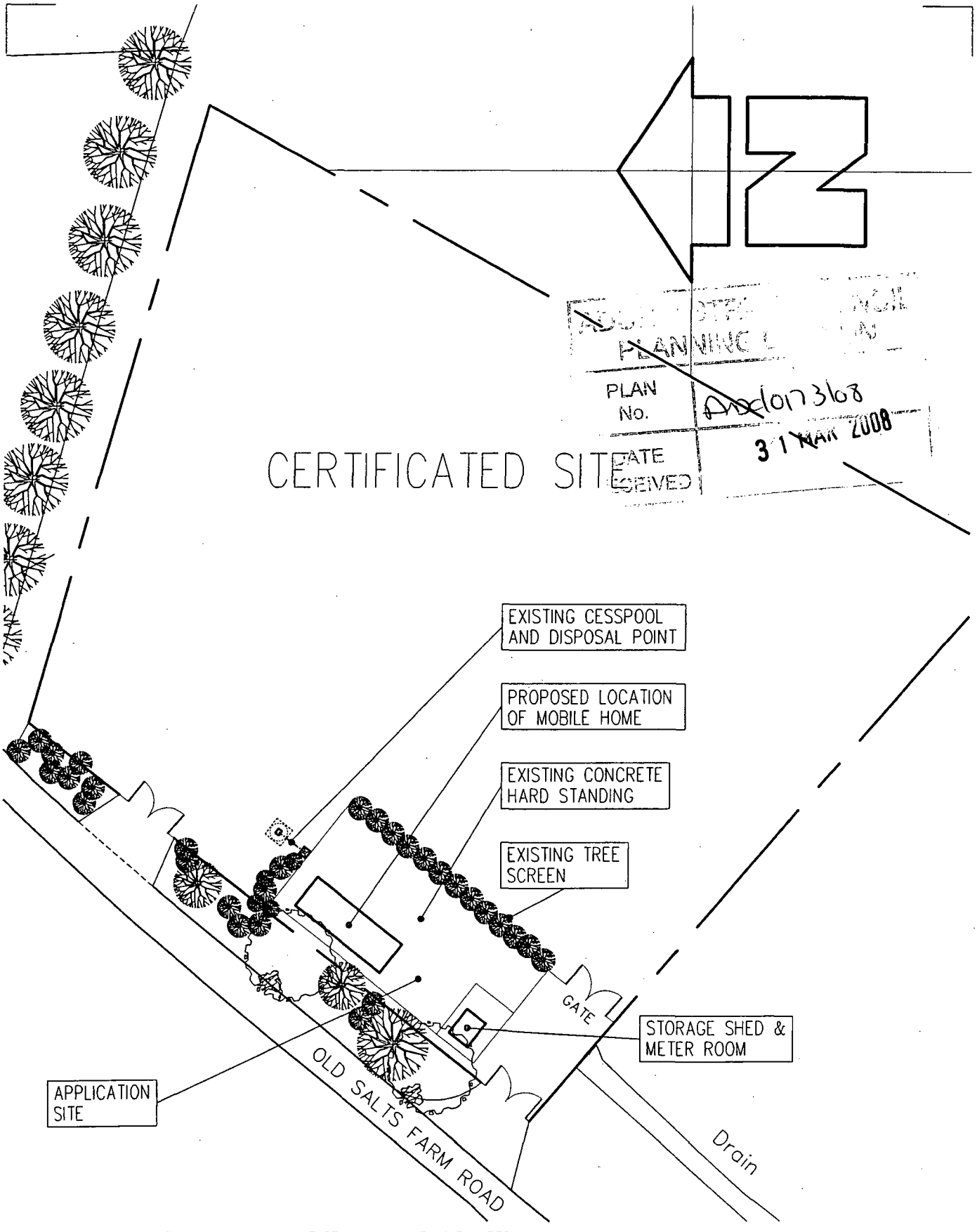
APPENDIX 2



SUBJECT TO SITE SURVEY AND ALL RELEVANT STATUTORY AUTHORITY APPROVALS.

Project: THE BARN – OLD SALTS FARM ROAD			Job No: 750A
Drawing: PROPOSED SITE PLAN			Drg.No: 07D
Scale: 1:500	Date: 10:08:2006	Drawn: DKC	CAD Ref: 750A-07D.dwg

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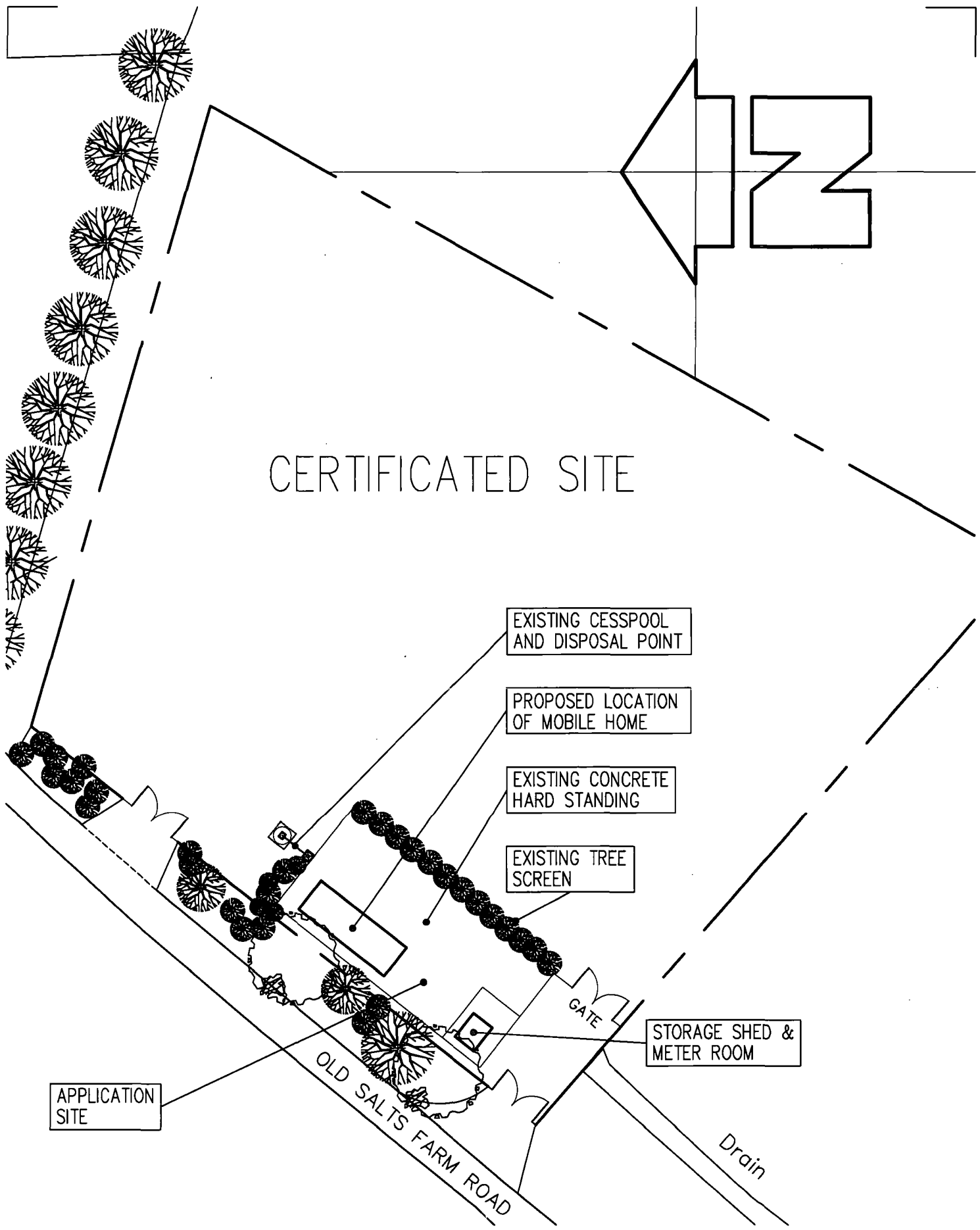

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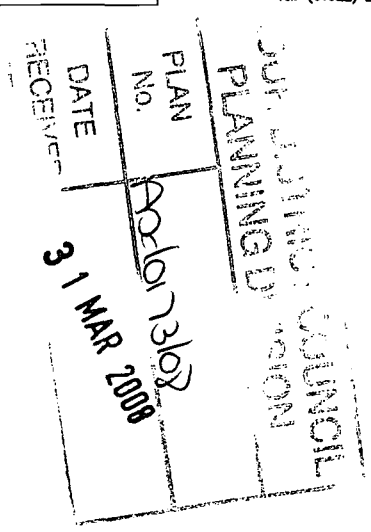

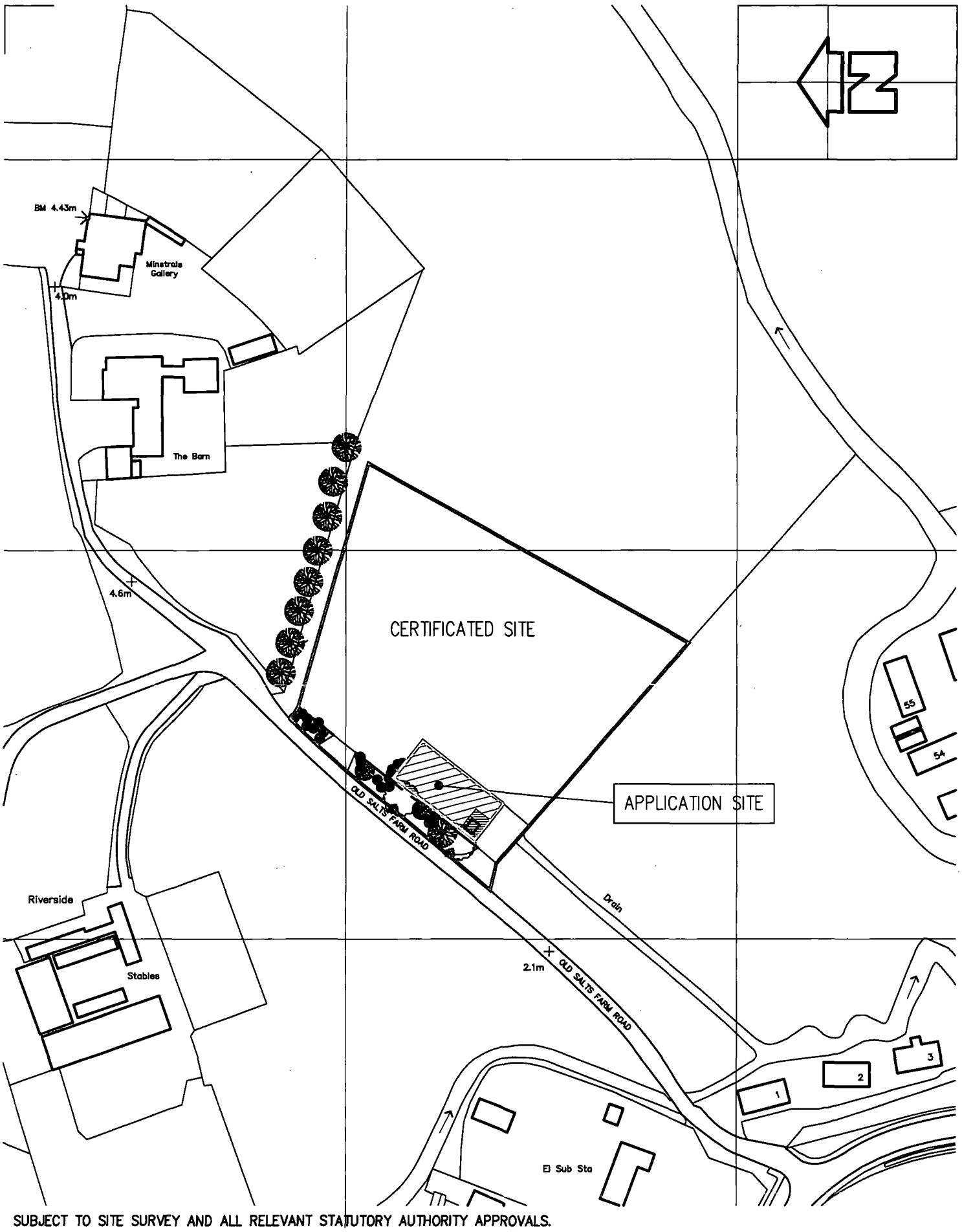

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