

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: AW/106/17/CLE

LOCATION: Copthorne Caravan Park
Rose Green Road
Bognor Regis

PROPOSAL: Certificate of lawfulness for the existing unconditional use of caravan site.

DESCRIPTION OF APPLICATION

This is a Certificate of Lawfulness application which seeks to confirm that the red edged part of Copthorne Caravan Park benefits from a deemed consent in accordance with Section 17 of the 1960 Caravans Sites and Control of Development Act - and that this includes the land on which application AW/103/92 applies by virtue of that permission having been discontinued in 1999.

unit in question is a building and not a mobile home and following a period of 4 years continuous residential use, now has full lawful residential status.

DESCRIPTION OF SITE AND SURROUNDINGS

Existing holiday caravan site comprising of 93 fully serviced holiday static caravans arranged around open grassed areas. The actual application site is 1.75 hectares in size and accommodates 80 holiday static caravans. The site is bisected by a footpath which links Hewarts Lane with Lower Bognor Road and Pagham Road to the North and Northwest. There is an adjoining parcel of land comprising an amenity building converted from a former factory. The caravans are predominantly owner occupied but there are around 10 rental units scattered across the whole site. Holiday caravan park set wholly with a residential area.

RELEVANT SITE HISTORY

AW/103/92	Use as touring caravan site for 4 touring caravans	ApproveConditionally 07-10-1992
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The applicants do not dispute that application AW/103/92 (which related to the siting of 4 touring caravan pitches on part of the caravan park) was commenced but they do assert that the use was subsequently discontinued after 1999.

REPRESENTATIONS

Representations received:

None.

Comments on Representations received:

N/A.

CONSULTATIONS

Planning Solicitor
Environmental Health

Consultations responses received:

ADC ENVIRONMENTAL HEALTH - no observations.

ADC SOLICITOR: 4th response set out below -

"ADDITIONAL COMMENTS DATED 18 MAY 2017

Thanks for your email dated 16 May and the 3 items of evidence from the applicants listed and commented upon below:-

(1) Unsigned statement /email 5/5/17

Not signed. The comments about the quality of the site and the upgrading - though true and referring to the site - are not relevant to the issue of whether AW/103 was abandoned - see my para (2) below as to what proving abandonment requires in planning law. Caravans siting may have ceased but - by the claimants own admission "storage uses associated with the caravans" continued - see their original statement attached para 8 pages 2/3 none of the planning law criteria for abandonment are addressed

(2) Plan shows south side of site as licensed in 1960 by BRUDC

Accepted - Shows extent of licence site circa 1960 but irrelevant to ref AW/103/92 which it predates.

(3) Full letter dated 5 May from agent

They accept my advice as to the non AW/103/92 part
They disagree as to AW/103/92 and insist on abandonment
Their new evidence is the owners unsigned email already analysed and critiqued above. The agent letter again repeats the negation of abandonment by referring to use of the site for the caravan park as stores , so this advance their case no further

Conclusion

I repeat previous advice - There is no evidence ref AW/103/92 was abandoned. However they are likely to get a planning permission to use without conditions as did the northern part of the site ref AW/361/16.

POINT OF CLARIFICATION

Thanks for the discussion on 2 May about the significance of planning refs P/17/81 and AW/361/16 which I refer to below and which occurs in the planning history.

I think it was understood and agreed that these references/decisions:-

- [a] affect the northern part site once administered by the former Chichester RDC;
- [b] don't refer to the southern site administered by the former Bognor Regis UDC; and
- [c] are significant because they suggest a way forward if you follow my recommendation in

relation to the southern site i.e. the applicants can use the above as material considerations to apply and seek to vary/discharge the conditions on ref AW/103/92 affecting the south east corner, if they don't succeed in proving "abandonment".

I am happy to clarify this aspect of the advice and please and please come back if more is required

1. ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

The somewhat complicated application seeks:-

A CLE for unconditional occupation as a caravan site of the site covered by ref AW/103/92 copy attached - "Certificate of lawfulness for the existing unconditional use of caravan site."

I say this because:-

[a] this is the only planning permission which imposes a condition on this site as at 7 April 2017 date of the application and covers the area shown on the plan lying to the south east of the site.

[b] it appears from the evidence listed on file and below the bigger part of the site, shown hatched on the annotated plan, never had a planning permission and was used as a caravan site since the 50s and licensed as such since 1961.

So under s193 you could issue a split CLEUD as per the above as to these different parts of the site and at RECOMMENDATION below.

I have included an annotated plan for illustration and explanation too.

Speak if it helps to understand what follows.

A simplified chronology of a complicated history is:-

1950s - Caravan site started at Copthorne - see 1961 caravan site licence and 1961 letter below refers to an existing caravan site at this time.

1961 - Caravan site licence issued for 1.5 acres site licence dated 29/3/61. Letter from Rapers solicitors dated 13/11/61.

1981 - Planning permission ref P/17/81 conditions use of caravans for holidays - March - October - very poor copy of consent and I am not certain it may not be for another site?

1992 - 07/10/92 - ref AW/103/92 planning permission issued for 4 touring caravans on small part of same site. The application aims to declare this abandoned/unnecessary ineffective. Note query - can you issue a planning permission to allow a development already lawful? Query - do you need to? Query is it better to seek a planning permission same as AW/361/16 given lack or sparse evidence of breach of conditions?

2016 - Ref AW/361/16 planning permission allows all round holiday let only - applies to north site thus lifting any conditions imposed by ref P/17/81.

2017 - Ref AW/106/17/CLE seeks "unconditional use" - applies to south site and indeed only to part of south side subject to AW/103/92 planning permission any way with conditional use for March-October only.

2. GENERAL RECOMMENDATION

I recommend you refuse for reasons that follow subject to your finding any contradictory evidence- in brief because there is no evidence planning permission ref AW/103/92 was abandoned or was breached for 10 years.

I rely on you to tell me of any evidence indicating otherwise.

I suggest it may be better for the applicants to seek not a CLE but a planning permission along the same lines as ref AW/361/16 already granted for another part of the site to allow siting of holiday caravans throughout the year. Also such an application would cover the whole of the site and be clearer to follow and understand.

3. DETAILS AND TESTS UNDER SS 191 TCPA 1990 AND NPPG GUIDANCE ON LAWFUL DEVELOPMENT CERTIFICATES [LDCs]

(a) Time: SS171 (1)-(3) and S191 TCPA 1990

The application - though not entirely clear - is for breach of condition 3 in ref AW/103/92 relating to prohibition on siting and use of caravans on site in March/October each year -which is the only condition affecting the CLE application site.

So the time limit is 10 years under the above.

The time period is 7 April 2007 - 7 April 2017 i.e. 10 years to date of the application.

The evidence doesn't satisfy this test so far as ref AW/103/92 on present evidence presented - but only because this evidence;-

[a] doesn't come direct from the site owners [easily resolved by a statement from them] but indirectly from the agents and.

[b] doesn't directly address the breach of condition by having caravans on site in March-October each year - which is the relevant question and instead alleges "abandonment " of the use of the site which is conditioned.

[c] doesn't directly address "abandonment".

I have at this date seen no contradictory evidence of this position. I explain why below.

As to the site not covered by AW/103/92, I believe on balance of probability evidence does show that this part of the site was used as a caravan site without conditions because no planning permission was issued for it.

(2) Sufficiency of Evidence: NPPG Guidance LDCs Part 3 Application and Determination

The evidence judged on a balance of probability and the above criteria is insufficient and is imprecise and ambiguous as to the site covered by ref AW/103/92 to prove on balance of probability any abandonment

Para 3 NPPG says that ".....if an LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version less than probable, there is no good reason to refuse provided the applicant's evidence alone is sufficiently precise and unambiguous".

Para 3 in NPPG cited above and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity.

As to "abandonment" of uses relating to ref AW/103/92, "abandonment" is difficult to evidence, and this evidence just alleges this but gives no detail and requires these matters to be assessed:-

- [a] regard to be had to site condition
- [b] fact and length of time for non-use
- [c] intervening uses to be considered
- [d] owner and occupiers intention

Which aren't assessed by the application and

also the application itself admits "the site was used for 4 touring caravans sited 1993-99 and then reverted to storage for the caravan park for which it was and is still used para 8 page 2 of statement by agent.

On the essentials to prove "abandonment" - See:

Northavon DC v SoSE 1990 JPL 579
Castell y Mynach Trustees v SoSW 1985 JPL40

S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

There is no evidence of an extant enforceable Enforcement Notice issued and affecting the Land.

Note - in 1992 the caravan site use was established and licensed for 30 years, proved by documentary evidence on file

The evidence analysis with comments is

(1) Application

Confirms application is to avoid conditions on land previously administered by BRUDC

(2) Letter and statement

Shows north part had no planning permissions since 1960 and use as caravan site but that the site covered by AW/103/92 was covered by condition s - but this can be discharged or varied by planning application to amend conditions.

(3) Drawings BUCCP/1 shows whole site and ref BUCCP TC 2/1 shows part covered by ref AW/103/92

Identifies part covered by planning condition as AW/103/92

(4) Letter 13/11/1961

Shows no planning permission issued in 1961

(5) Caravan site licence ref 29/3/61

Shows caravan site licence issued in 1961 for whole site including AW/103/92

(6) Planning permission ref P/17/81 conditions use of caravans for holidays -March - October - very poor copy of consent

Doesn't address AW/103/92

(7) Ref AW/361/16/PL planning permission allows all round holiday let only - applies to north site and so discharges ref P/17/81

Doesn't address AW/103/92

So in summary I advise:-

[a] as to the north site not covered ref AW/103/92 you can grant due to evidence of no condition due to no planning permission on balance of probability. On the plan I show this hatched.

[b] as to AW/103/92 on land to the south east of the site, refuse because no evidence shows any "abandonment" on balance of probability.

4. FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5. RECOMMENDATION /TERMS

[a] As to the site covered by AW/103/92, I believe on balance of probability evidence fails to show that this part of the site was used as a caravan site without conditions so :-

1. Refuse

2. No evidence of ten years breach on balance of probability supplied on file

3. No evidence on balance of "abandonment " of use indeed .there is admission site ref AW/103/92 was used as a caravan site /and now as storage

[b] As to the site not covered by AW/103/92, I believe on balance of probability evidence does show that this part of the site was used as a caravan site without conditions due to the letters dated 1961 so:-

1. grant
2. identify precise land boundaries on plan for extent of use.
3. describe accommodation ie number of caravans and locations etc

Also I advise and suggest you consult Environmental Health Caravans Licensing Officer"

Comments on Consultation responses:

The planning officer wrote to the solicitor on 13 June with the following:

"I'm not sure I agree with your latest advice on this one re abandonment.

You say that:

Abandonment is difficult to evidence, and this evidence just alleges this but gives no detail and requires these matters to be assessed:-

- [A] Regard to be had to site condition;
- [B] Fact and length of time for non-use;
- [C] Intervening uses to be considered; and
- [D] Owner and occupier's intention.

Which aren't assessed by the application and also the application itself admits the "site was used for 4 touring caravans sited 1993-99 and then reverted to storage for the caravan park for which it was and is still used"

However, my view is that:

- (a) There has been no change to the site condition in that it was previously grassed land, was grassed land when it has tourers on it and still is grassed land.
- (b) The evidence suggests that the site has not been used for touring caravans since 1999 (18 years).
- (c) The evidence suggests that the site was originally used as a maintenance/storage area. It had tourers on it between 1993 & 1999 and since then has reverted back to the previous use for maintenance/storage.
- (d) The owner ceased the tourer use in 1999 because it was down grading the business. The current intention I believe is to use the land for the siting of holiday static caravans.

I believe the key evidence for abandonment is as follows:

- (1) Evidence from aerial photos is no caravans shown on AW/103/92 site in 1991 (pre the PP) or 2001/2007/2010/2012/2015 (post PP).
- (2) English Tourist Board Grading Scheme - 2000 grading report states that no longer any touring caravans at the park. This was because addition of tourers was considered to 'downgrade' the visitor rating from 4 to 3 stars.
- (3) Toilet & shower buildings are now used for storage

(4) Touring Caravans are on land previously part of caravan site but not previously occupied by caravans. A 1957 Plan includes the touring site within the park area..

(5) The Ctte Report for AW/103/92 describes the site as "a grassed area forming part of the much larger caravan site complex"

(6) An objection letter was submitted in respect of application AW/103/92 from the occupier of 1 Hewarts Lane (dated 09/07/92) which describes the site as a maintenance area used for maintenance of the site. This is what the site is currently used for.

My view is that although the land subject to AW/103/92 was used for the siting of touring caravans between 1993 and 1999, it has since 1999, reverted back to its previous use as a maintenance storage area for the larger caravan park and as such is part of the original deemed consent area."

The solicitor's response to this was as follows:

"My simple first thought is - I suppose you could justify a decision to grant this CLE for unconditional use of this part of the caravan site - on the basis - that 10 years passed with conditions being breached and without enforcement - which avoids the problems I had deciding if the use was "abandoned" so yes you could grant this CLE for unconditional use.

Further, I reply ;-

1. The ultimate decision rests with you as decision maker - and I wouldn't see your decision to grant [if that is eventually it] as without justification or advantage;
2. Pragmatically, also it does avoid a refusal and subsequent new planning application to remove conditions on this piece of the land, so it can go back to a caravan park but without conditions;
3. My hesitation is due to the usual rule that to abandon a planning permission and authorised use is "difficult";
4. I suppose you could justify a decision to grant - on the basis - that 10 years passed with conditions being breached and without enforcement - which avoids the problems I had deciding if the use was "abandoned"; and
5. You could argue too, that the planning permission ref AW/103/92 was never commenced, and was not fully used as a caravan site."

Re point 5. above, the evidence is clear that the touring caravan use did indeed commence.

LEGISLATIVE BACKGROUND

Section 191(4) of the Town and Country Planning Act 1990 states:-

"If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on LDC's have the

effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

- (i) What is judged on a balance of probability;
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence; and
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

Section 17 of the Caravan Sites and Control of Development Act (1960) is also relevant. This part of the Act was repealed by the Statute Law (Repeals) Act 1993 but remains relevant insofar as it relates to the situation in 1960.

This relates to any application for a site licence in respect of an existing site, other than a site which had at the date of the application the benefit of a permission for the use of the land as a caravan site. It required (sec.17(2)) the local authority to whom the site licence application was made to transmit the application to the local planning authority which could then grant planning permission for the use of the site as a caravan site.

However, if (sec.17(3)) within six months of the application being made, the local planning authority had not either (a) granted planning permission for the use of the land as a caravan site (sec.17(3)(a)) or (b) served an enforcement notice requiring the use of the land as a caravan site to be discontinued (sec.17(3)(b)) then permission for the use of the land as a caravan site without any condition or limitation was deemed to have been granted.

CONCLUSIONS

The advice of the Council's solicitor is clear that on the balance of probability, there is sufficient evidence to show that the main part of the application site (excluding that permitted by AW/103/92) benefits from a deemed consent in accordance with Section 17 of the Caravan Sites and Control of Development Act 1960. As such, this part of the site benefits from a permission for caravans but with no restrictions or limitations on the use.

In respect of the part of the site subject to AW/103/92, this area had originally been used as a maintenance area used for maintenance of the site & caravans. This area would have also benefitted from the same deemed consent had this been confirmed prior to the implementation of the touring caravan permission. This did not happen and the site was then redeveloped with 4 touring caravan pitches and an area of amenity space. However, it is clear from the evidence that this use was then discontinued after 1999 and the land reverted back to its former use as a maintenance/storage area.

It follows therefore that this part of the site has been used for its original purpose for a continuous period of 18 years. Furthermore, the evidence of aerial photography is clear that the land has remained as grassed land without any hard surfacing since before the touring caravan permission and afterwards up until the present day. Indeed, the present site condition shows no evidence of the touring caravan use and the former toilet block buildings are currently used for storage only.

Therefore, it is considered that a case can be made for the touring caravan use having been abandoned and on this basis, that the use of this part of the site would have reverted back to the previous use i.e. back to being part of a caravan park benefitting from deemed consent with no

restrictions or limitations.

It is therefore recommended that this Certificate be granted in its entirety as follows.

RECOMMENDATION

APPROVE

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the property had been in use as a private dwelling and not a mobile home for a continuous period of 4 years.

FIRST SCHEDULE

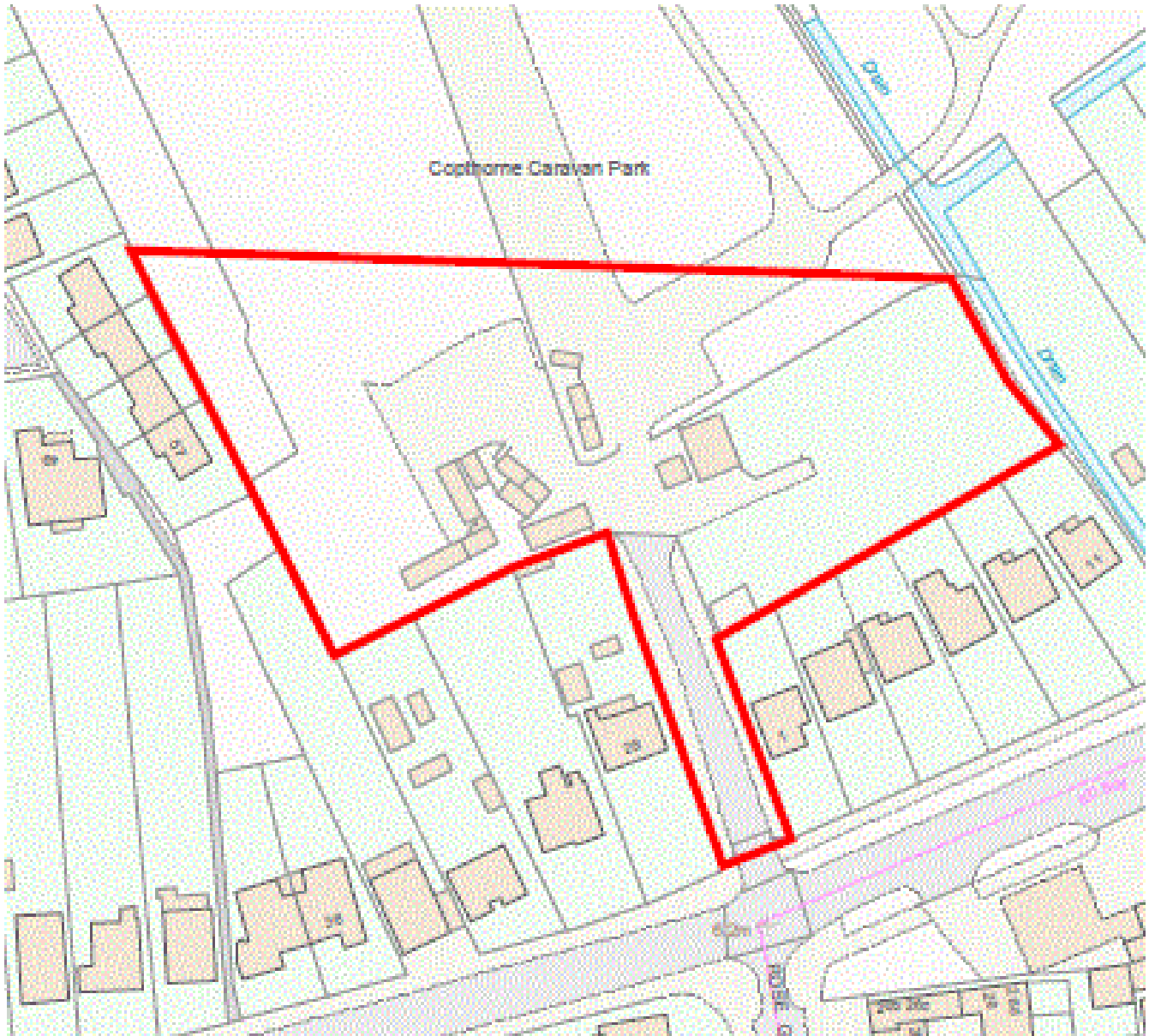
Use of the land as a caravan park with no conditions or limitations.

SECOND SCHEDULE

Copthorne Caravan Park, Rose Green Road, Bognor Regis, West Sussex, PO21 3ER

EXTENT OF USE

Part of the existing Caravan Park which was previously within the jurisdiction of the Bognor Regis Urban Development Council (as opposed to the other part of the park which fell within Chichester Rural Development Councils jurisdiction) and which equates to an area of approximately 0.55 hectares.



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