

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

REF NO: R/172/21/CLE

LOCATION: 12 Dinsdale Field Caravan Park
New Road
Rustington
BN16 3RQ

PROPOSAL: Lawful development certificate for an existing use as full residential use.

DESCRIPTION OF APPLICATION

Continuance of residential use as a permanent dwelling without compliance with temporary occupancy condition.

SITE AND SURROUNDINGS

The site comprises a detached 2 bedroom mobile home with an area of hard standing to one side and is located at the eastern end of the existing mobile home park where some detached dwellings have been constructed.

RELEVANT SITE HISTORY

R/27/99/	Siting of one caravan and garden shed.	Approve 12-03-99
R/205/92	Renewal of temporary planning permission R/340/87 for siting of one caravan, retention of garden shed, septic settlement tank and pipe.	ApproveConditionally 05-01-93

R/205/92 Renewal of temporary planning permission R/340/87 for siting of one mobile home expired on 31-12-1997 and was subject to condition 3 which stated "This permission shall authorise the use of the land as a site for a caravan for holiday purposes only and such use during the period November-February inclusive shall not include the use of the caravan as living quarters for a period exceeding 30 days...."

This condition repeated that imposed previously on R/340/87.

Planning permission was subsequently granted for a caravan and garden shed under planning permission R/27/99, but the site history available does provide a full version of the decision notice. If the occupancy condition was imposed the period to demonstrate continuous occupation would be 10 years.

if not it would be 4. In anycase the agent has submitted evidence to cover a 10 year period from previous residents at the address which confirm the premises was their sole dwelling and used for continuous occupation throughout the year.

REPRESENTATIONS

Representations Received:

Rustington Parish Council

Rustington Parish Council - No Objection

Comments on Representations Received:

None

CONSULTATIONS

Consultations Responses Received:

Environmental Health - Objection

Having reviewed our records for this site, I can confirm that plot 12 Dinsdale Field is currently licensed under the Caravan Sites and Control of Development Act 1960 for one holiday caravan (in accordance with planning permission R/27/99). The site licence (no. 3139) was issued on 05 May 2000 and is held by Mr. K. J. Dowding of 12 Dinsdale Field.

With regard to the above application, the submitted documentation does not prove that the unit has been/is being used for residential purposes. It is anticipated that evidence such as Council Tax records, for example, would be submitted to support such an application.

In the event that the current holiday use is approved by the Planning Team to be changed to residential, the applicant must make an application to Environmental Health for a new site licence.

This is because operating a caravan site without a licence or without the correct licence is an offence under the Caravan Sites and Control of Development Act 1960.

Comments on Consultation Responses:

The statements by previous occupiers which now forms part of the proposal were not available on the Council's web site when the EHO officer made her comments.

LEGISLATIVE BACKGROUND

Section 192(2) 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 that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

PRINCIPLE

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 S171(1)-(3) and S191 TCPA 1990. The continued use of the premises for permanent residential use not in compliance with an occupation condition to be exempt from planning control is 10 years. Section 171B(3) provides that no enforcement action can be taken against a breach of a planning condition after the end of the period of ten years from the date on which the breach first occurred. In effect, there is a ten-year "immunity" rule applicable to the service of a breach of condition notice (except a condition relating to use as a single dwellinghouse where the period of "immunity" is four years). Thus, assuming the breach has been continuous, any breach of condition which first occurred more than ten calendar years before the date on which the LPA formally recognise its occurrence has perpetual immunity.

CONCLUSION

The evidence submitted which includes 5 statements from previous occupiers referring to continual occupation of the home since 2010 provides sufficient proof that the use of the land and mobile home as a private dwellinghouse and garden has occurred on a continuous basis in excess of 10 years and the LPA can no longer take enforcement action against the development in line with section 171B of the Town and Country Planning Act 1990 (as amended).

The certificate is recommended for approval.

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 site has been used as a private dwelling house and garden on a permanent and continuous basis for a continuous period of 10 years.

FIRST SCHEDULE

Continuance of use of 12 Dinsdale Field, Rustington for non-seasonal, permanent residential occupation.

SECOND SCHEDULE

12 Dinsdale Field Caravan Park, New Road, Rustington, BN16 3RQ.

INFORMATIVE:

The Environmental Health Officer has advised that if the current holiday use is approved to be changed to permanent residential, the applicant must make an application to Environmental Health for a new site licence.

This is because operating a caravan site without a licence or without the correct licence is an offence under the Caravan Sites and Control of Development Act 1960.

EXTENT OF USE

Continuance of use of the site for a 2 bedroom caravan for permanent all year round residential accommodation.

R/172/21/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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